Missouri Attorney General's Opinions - 1990

Opinion	Date	Topic	Summary
15-90	Mar 1	COOPERATIVE AGREEMENTS. FIRE PROTECTION DISTRICTS.	A fire protection district is authorized to enter into a cooperative agreement with a volunteer fire association incorporated as a not-for-profit corporation.
16-90	Oct 31		Opinion letter to James R. Moody
25-90	Aug 7	JUVENILE OFFICERS. OFFICE OF ADMINISTRATION. WORKERS' COMPENSATION.	Juvenile officers, appointed pursuant to Section 211.351, RSMo 1986, and funded by the State of Missouri pursuant to Section 211.393, RSMo Supp. 1989, are state employees for purposes of the workers' compensation laws; - however, other juvenile court personnel are not state employees for purposes of the workers' compensation laws.
26-90	May 24		Opinion letter to Frank V. DiMaggio
28-90	Mar 29		Opinion letter to The Honorable George Dames
31-90	Apr 5	FIRE HYDRANTS. FIRE PROTECTION - FIRE PROTECTION DISTRICTS. PUBLIC WATER SUPPLY DISTRICTS. WATER LINES.	A fire protection district has the power under Chapter 321, RSMo, by a properly enacted ordinance to require a public water supply district to include fire hydrants when installing water mains within the fire protection district boundaries or updating or upgrading the water mains.
33-90	June 11	CITIES, TOWNS AND VILLAGES. FOURTH CLASS CITIES. LIQUOR.	1) The City of Lakeview, a fourth class city of less than five hundred inhabitants, pursuant to Section 311.090, RSMo 1986, can hold an election on the question of whether the sale of intoxicating liquor, with certain exceptions, by the drink at retail for consumption on the premises where sold shall be permitted, 2) can regulate the sale of intoxicating liquor provided the regulations are in harmony with state law and 3) is not authorized to tax intoxicating liquor except as provided in Section 311.220, RSMo 1986.
34-90	Jan 23	CITIES, TOWNS AND VILLAGES. CITY FUNDS. CITY PARKS.	Cities which levy a tax for parks pursuant to Section 90.500, RSMo 1986, may not impose an administrative service fee on the park fund for processing checks and providing accounting services for the park fund.
39-90	Oct 9	DEPUTY JUVENILE	Deputy juvenile officers and juvenile detention facility personnel are

		OFFICERS. JUVENILE OFFICERS. STATE LEGAL EXPENSE FUND.	not covered by the State Legal Expense Fund, Section 105.711, RSMo.
40-90	Apr 18		Opinion letter to The Honorable John Kauffman
41-90	Aug 27	AUTOMOBILE DEALER. BONDS. MOTOR VEHICLES. SURETY BOND.	(1) Motor vehicle dealer bonds required by Section 301.560, RSMo Supp. 1989, do not provide coverage for activities occurring outside the State of Missouri; and (2) "any aggrieved party" as used in Section 301.560, RSMo Supp. 1989, includes licensed motor vehicle dealers and automobile auctions as well as purchasers.
42-90	Sept 12	BOARD OF TRUSTEES. FIRE PROTECTION DISTRICT. INCOMPATIBILITY OF OFFICES. VILLAGES.	The same person may not simultaneously serve as a director of a fire protection district and as trustee of a village located within that fire protection district; however, an incumbent director of a fire protection district can be a candidate for the office of trustee of a village located within that fire protection district.
44-90	Oct 9		Opinion letter to The Honorable Jacqueline T. McGee
46-90	May 15	COOPERATIVE AGREEMENTS. POLICE.	Political subdivisions within the State of Missouri may enter into mutual aid or cooperative agreements relating to police services with political subdivisions of another state; however, there is no authority for the Missouri political subdivision to confer police authority upon members of the law enforcement agency of the political subdivision located outside the State of Missouri except by commissioning those members.
47-90	Nov 19	DEATH CERTIFICATES. DEPARTMENT OF HEALTH. ECONOMIC DEVELOPMENT, DEPARTMENT OF. FUNERAL DIRECTORS. VITAL STATISTICS.	If the cause of death can be determined within seventy-two (72) hours after death, Section 193.175, RSMo 1986, requires a completed death certificate to be filed with the local registrar before a body is cremated in the State of Missouri.
50-90	Feb 7	FILING. RECORDER OF DEEDS. RECORDING. UNIFORM COMMERCIAL CODE.	The user fee specified in Section 59.319, RSMo Supp. 1989, should not be collected when a UCC-1 is merely filed, but such user fee should be collected when a UCC-1 is filed for record or recorded.
51-90	Apr 12	AUDITS.	A county auditor of a first class non-charter county is not authorized to

		COUNTIES. COUNTY AUDITOR.	conduct an audit of a corporation organized under Chapter 355, RSMo, even if the corporation performs a public function on behalf of the county and has as a primary purpose to enter into contracts with the county and engage in activities carried out pursuant to an agreement with the county.
52-90	May 30	COUNTIES. DEPARTMENT OF MENTAL HEALTH. MENTAL HOSPITAL. MENTAL RETARDATION. PUBLIC ADMINISTRATOR. STATE HOSPITALS. STATE MENTAL HOSPITALS.	The Saline County Public Administrator is not eligible to employ a secretary under the provisions of subsection 2 of Section 473.737, RSMo Supp. 1989.
53-90	Feb 8	CONSTITUTION. GAMBLING. LOTTERIES. LOTTERY COMMISSION.	Additional statutory authorization is not necessary for the State Lottery Commission to formulate a lottery game where the prizes are based on the player's predictions on the outcome of professional sporting events.
54-90	Aug 14		Opinion letter to The Honorable Jean H. Mathews
56-90	Sept 28	SCHOOLS. SCHOOL DISTRICTS. TEACHERS. TUITION.	Section 168.151, RSMo 1986, prohibits a school district from collecting from a teacher employed by the district tuition for a non-resident child of the teacher to attend school in the district.
58-90	Apr 10	DEPARTMENT OF PUBLIC SAFETY. LIQUOR.	(1) Subsection 2 of Section 311.332, RSMo Supp. 1989, does not prohibit a wholesaler of intoxicating liquor or wine containing alcohol in excess of five percent by weight from meeting lower competing prices and discounts for liquor or wine of the same brand and trade name and of like age and quality as provided in Section 311.336, RSMo 1986, (2) the amended price schedule allowed in Section 311.336 shall be in effect for the calendar month following the amendment as provided in that section, and (3) the lower competing price referred to in Section 311.336 is based on the filed schedule of prices and not temporary price reductions authorized by subsections 2 and 3 of Section 311.332.
61-90	Aug 10	COLLECTOR'S DEEDS. COUNTY	Purchasers of property at third offering tax sales are entitled to receive a collector's deed without awaiting any period of redemption and are

		COLLECTORS. DELINQUENT TAX SALES. TAX DEEDS.	exempt from the requirements of Section 140.405, RSMo Supp. 1989.
65-90	June 25	CITIES, TOWNS AND VILLAGES. CITY UTILITIES. CONSTITUTIONAL CHARTER CITIES. WATERWORKS.	A constitutional charter city pursuant to Section 91.600, RSMo 1986, may acquire lands by the power of eminent domain in a county other than the county where the city is situated to dam up a river to form a water reservoir as a source of water supply for the city.
67-90	Feb 7	ABORTION. LIBRARIES. PUBLIC FUNDS. PUBLIC LIBRARIES.	Section 188.205, RSMo 1986, does not prohibit libraries (whether public or private which receive public support) from cataloging, housing, or circulating abortion material.
70-90	Oct 9		Withdrawn
78-90	Mar 19	GRAND JURY. JURIES-JURORS. PUBLIC RECORDS. RECORDS. SUNSHINE LAW.	The circuit clerk, prosecuting attorney and circuit judge are not required to release to the media and public the names of members of a grand jury.
80-90	May 11	AMBULANCE DISTRICTS. CANDIDATES. ELECTION OF DIRECTORS. ELECTIONS.	Pursuant to Section 190.050.1, RSMo Supp. 1989, if only one candidate files for the office of ambulance district director in an election district, the ambulance district may forego the holding of an election in that election district.
81-90	Feb 6		Opinion letter to The Honorable Roy D. Blunt
87-90	May 30	CONFLICT OF INTEREST. LEGISLATORS. REPRESENTATIVES. SCHOLARSHIPS. STATE UNIVERSITIES. UNIVERSITIES.	Article III, Section 12, of the Missouri Constitution does not prohibit a state representative from accepting student financial aid from a state university if no employment is required, but such section prohibits a state representative from accepting a graduate assistantship which requires employment.
88-90	Sept 17	ATTORNEYS. CONFLICT OF INTEREST. COUNTIES. NEPOTISM. PUBLIC	(1) It would be a violation of Article VII, Section 6 of the Missouri Constitution, the nepotism provision, for the Ray County Public Administrator to retain in her official capacity her brother-in-law who is an attorney, and (2) it would not be a violation of Article VII, Section 6 of the Missouri

		ADMINISTRATOR.	Constitution or Sections 105.450 et seq., RSMo, for the public administrator to contract with an abstract corporation whose stock is wholly owned by her brother-in-law.
90-90	Mar 22		Opinion letter to The Honorable Dennis W. Smith, The Honorable B.J. Marsh and The Honorable Joe McCracken
92-90	July 24		Opinion letter to Charles E. Kruse
97-90	Mar 27	MEETINGS. NOTICES. SUNSHINE LAW.	Pursuant to Section 610.022.2, RSMo Supp. 1989, notice of a closed meeting of a public governmental body must include the time, date and place of the meeting and a reference to the specific statutory exception allowing the meeting to be closed; however, notice of a closed meeting is not required to include a tentative agenda.
99-90	Feb 23		Opinion letter to The Honorable Roy D. Blunt
107-90	Mar 19	CORPORATION STOCK. CORPORATIONS. STOCK-CORPORATE. STOCKHOLDERS.	Under Section 351.405, RSMo 1986, a dissenting shareholder is not entitled to receive dividends, whether the dividends are regularly scheduled or extraordinary, that are declared after the date on which the vote was taken authorizing the sale or exchange.
108-90	July 26	CRIMES. CRIMINAL LAW. DEPARTMENT OF CORRECTIONS. HANCOCK AMENDMENT. PROSECUTING ATTORNEY.	Prosecution by the Dekalb County Prosecuting Attorney of correctional facility inmates who violate Missouri criminal statutes does not involve a new or increased activity or service for which state funds must be appropriated under Article X, Section 21, of the Missouri Constitution.
112-90	June 29	MENTAL HEALTH, DEPARTMENT OF. STATE LEGAL EXPENSE FUND.	The trustees of the Missouri Family Trust Fund are entitled to coverage by the State Legal Expense Fund as provided in Section 105.711, RSMo Supp. 1989.
121-90	May 11		Opinion letter to The Honorable Roy D. Blunt
122-90	May 11		Opinion letter to The Honorable Roy D. Blunt
128-90	Dec 11		Opinion letter to The Honorable John F. Bass
132-90	June 14		Opinion letter to The Honorable Roy D. Blunt
133-90	Nov 29	CIRCUIT CLERKS. CIRCUIT COURT. COUNTY JAIL. COUNTY SALES TAX.	A third class county may expend sales tax revenue collected pursuant to Section 67.582, RSMo Supp. 1989, for a facility to house associate circuit court courtrooms, the circuit clerk's office, the county prosecuting attorney's office, the county sheriff's office, and the county

		JAILS. PROSECUTING ATTORNEY. SHERIFFS. TAXATION-GENERAL. TAXATION-SALES TAX.	jail.
135-90	Nov 13		Opinion letter to G. Tracy Mehan, III
136-90	July 2		Withdrawn
139-90	July 3		Opinion letter to The Honorable Roy D. Blunt
143-90	July 23	CONFLICT OF INTEREST. OFFICERS. OFFICIALS. ST. LOUIS CITY.	A commissioner of the St. Louis Regional Convention and Sports Complex Authority established under Sections 67.650 through 67.658, RSMo Supp. 1989, is not prohibited from serving as a member of the authority because he is employed by a securities firm submitting a proposal for underwriting bonds issued by the authority; however, such commissioner may not participate in the process of selecting the underwriter.
150-90	Dec 11	CITIES, TOWNS AND VILLAGES. CONFLICT OF INTEREST. LOBBYING.	(1) The provisions of Section 105.483(8), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990), apply to administrative boards of constitutional charter cities such as Springfield, Missouri, when such boards administer the affairs of municipal utilities and have authority to make contracts and enact rules; (2) a city council does not have authority to designate persons subject to reporting requirements under Section 105.483(8) by virtue of the provisions of Section 105.483(7).
170-90	Oct 9	CIRCUIT COURT. STATE AUDITOR. STATE AGENCY.	The State Auditor is authorized to audit the Sixteenth Judicial Circuit pursuant to Article IV, Section 13, Missouri Constitution, and Section 29.200, RSMo 1986.
174-90	Nov 29		Opinion letter to The Honorable Roy D. Blunt
179-90	Oct 26	ST. LOUIS CITY. STATE LEGAL EXPENSE FUND.	The St. Louis Regional Convention and Sports Complex Authority created under Section 67.650, et seq., RSMo Supp. 1989, and its members are not covered by the State Legal Expense Fund, Section 105.711, RSMo.
193-90	Nov 29		Opinion letter to Board of Police Commissioners of Kansas City, Missouri
197-90	Nov 29	CONFLICT OF	The phrase “which exceeds fifty dollars on any one occasion or instance

		INTEREST. LOBBYING.	or two hundred fifty dollars in the aggregate for any reporting period" in Section 105.470.4(2), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990) modifies the terms "expenditure, gift, payment, line of credit or loan ... including a service or anything of value...."
198-90	Dec 26	COMPENSATION. FIRE PROTECTION DISTRICTS.	Pursuant to the provisions of Article VII, Section 13 of the Missouri Constitution, no current member of the board of directors of a fire protection district is entitled to the increase in attendance fees authorized by Section 321.190, as amended by Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Bill No. 1395 and House Bill No. 1448, 85th General Assembly, Second Regular Session (1990), until he assumes a new term of office.

COOPERATIVE AGREEMENTS: A fire protection district is
FIRE PROTECTION DISTRICTS: authorized to enter into a cooperative agreement with a volunteer fire association incorporated as a not-for-profit corporation.

March 1, 1990

OPINION NO. 15-90

Douglas Abele
Cooper County Prosecuting Attorney
422 E. Spring Street
Boonville, Missouri 65233

Dear Mr. Abele:

This opinion is in response to your question asking:

> Can the Cooper County Fire Protection District properly engage in a cooperative agreement with the Prairie Home Volunteer Fire Department by which said Fire Protection District would serve areas outside of their specified district in consideration of Prairie Home's assistance within the boundaries of said Fire Protection District?

You have indicated that the Prairie Home Rural Fire Association, which we presume is the volunteer fire department referred to in your question, is a not-for-profit corporation.

Section 70.220, RSMo 1986, authorizes cooperative agreements between political subdivisions and private entities. Such section provides:

> 70.220. Political subdivisions may cooperate with each other, with other states, the United States or private persons.--Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or

> their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides.

Section 70.210(3), RSMo Supp. 1989, defines "political subdivision" for purposes of Section 70.220 to include fire protection districts. Under Section 70.220, the fire protection district is authorized to enter into a cooperative agreement with a private association or corporation for a common service. In reliance on this section, this office in Missouri Attorney General Opinion Letter No. 78, McCubbin, 1978, a copy of which is enclosed, concluded that a cooperative agreement can be entered into between a fire protection district and a city or between a city and a not-for-profit fire protection association or by a city, a fire protection district and a not-for-profit association.

In 1982, the Missouri General Assembly amended Section 321.220, RSMo, relating to the powers of fire protection districts by adding a new subsection 16 and enacted Section 321.221. See Laws of Missouri, 1982, page 527. Section 321.220(16), RSMo Supp. 1989, provides:

> 321.220. Powers of board.--For the purpose of providing fire protection to the property within the district, the district and, on its behalf, the board shall have the following powers, authority and privileges:

* * *

> (16) To contract with any municipality that is contiguous to a fire protection district for the fire protection district to provide fire protection to the municipality for a fee as hereinafter provided.

Section 321.221, RSMo 1986, sets forth a comprehensive scheme for computing the fee referred to in Section 321.220(16). Section 321.221 provides:

> 321.221. Municipality purchasing fire protection, annual payments, how computed.--The amount to be paid annually by the municipality to the fire district pursuant to subdivision (16) of section 321.220 shall be the annual assessed value of all property subject to tax in the municipality determined from the tax assessment ledgers, and including public utilities and intangible property within such area, multiplied by the annual tax rate as certified by the fire protection district to the municipality (but not including any portion of the tax rate for ambulance service provided by the district) per one hundred dollars of assessed value in such area. The tax rate so computed shall include any tax on bonded indebtedness incurred by the district prior to entering into such contract, but shall not include any of the tax rate for bonded indebtedness incurred during the term that the contract is in force.

There is apparently concern that the enactment of Section 321.220(16) and Section 321.221 in 1982 limits the ability of a fire protection district to contract with a private association or corporation. One rule of statutory construction is that the express mention of one thing implies the exclusion of another, so that where special powers are expressly conferred or special methods are expressly prescribed for the exercise of the power, other powers and procedures are excluded. Brown v. Morris, 290 S.W.2d 160, 166 (Mo. banc 1956). However, this is an auxiliary rule of statutory construction, application of which is dependant on the facts; the purpose of the rule is to ascertain legislative intent and the rule must be applied with

caution. Reorganized School Dist. No. R-8 of Lafayette County v. Robertson, 262 S.W.2d 847, 850 (Mo. 1953). We do not consider the enactment of Section 321.220(16) and Section 321.221 in 1982 as precluding the fire protection district from entering into a cooperative agreement with a private association or corporation such as you describe in your question. Statutes relating to the same subject are to be considered together and harmonized if possible so as to give meaning to all provisions of each. State ex rel. Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985). We conclude that the enactment in 1982 of Section 321.220(16) and Section 321.221 does not limit the ability of a fire protection district to enter into a cooperative agreement with a volunteer fire association incorporated as a not-for-profit corporation. Section 70.220 specifically authorizes cooperative agreements between fire protection districts and private associations or corporations.

CONCLUSION

It is the opinion of this office that a fire protection district is authorized to enter into a cooperative agreement with a volunteer fire association incorporated as a not-for-profit corporation.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 78, McCubbin, 1978

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
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October 31, 1990

OPINION LETTER NO. 16-90

James R. Moody, Commissioner
Office of Administration
Post Office Box 809
Jefferson City, Missouri 65102

Dear Commissioner Moody:

This opinion letter is in response to the following questions received from your office:

> The question has been raised with this office as to whether or not employees of Watershed Subdistricts of a Soil and Water Conservation District can be covered by OASDHI, as provided in [Sections] 105.300 to 105.445, RSMo. The question is whether or not Watershed Subdistricts are instrumentalities of the state or its political subdivisions. [Sections] 278.160 to 278.300, RSMo provide for the establishment of Watershed Subdistricts and outline their organization and the extent of their authority.
>
> Are employees of Watershed Subdistricts covered by OASDHI and, if so, should they be covered by direct agreement between the Watershed Subdistrict and this office, or as part of the Soil and Water Conservation District?

Section 105.310, RSMo 1986, explains the manner in which the state and federal government can provide coverage and the types of services to be covered.

> 105.310. Federal-state agreement--contents--services covered.--1. The state agency, with the approval of the governor, shall enter into on behalf of the state an agreement with the Secretary of Health and

> Human Services, consistent with sections 105.300 to 105.440, for the purpose of extending the benefits of the federal old age and survivors insurance system to employees of the state or of any of its political subdivisions, or of any instrumentality of any one or more of them, with respect to services specified in such agreement, which constitute employment as defined in section 105.300. . . .
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> * * *
>
> 4. All services shall be covered by the agreement which:
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> (1) Constitute employment as defined in section 105.300;
>
> (2) Are performed in the employ of a political subdivision or in the employ of an instrumentality of either the state or a political subdivision; . . . and
>
> (3) Are covered by a plan which is in conformity with the terms of the agreement approved by the state agency under section 105.350. [Emphasis added.]
>
> * * *

Definitions of the terms underscored are set out in Section 105.300, RSMo 1986, as follows:

> (4) "Employment", any service performed by any employee of the state or any of its political subdivisions or any instrumentality of either of them, which may be covered, under applicable federal law, in the agreement between the state and the Secretary of Health, Education and Welfare, except services, which in the absence of an agreement entered into under sections 105.300 to 105.440 would constitute "employment" as defined in section 210 of the Social Security Act (42 U.S.C.A. § 410); any services performed by an employee as a member of a coverage group, in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, which

> retirement system is supported wholly or in part by the state or any of its instrumentalities or political subdivisions, shall not be considered as "employment" within the meaning of sections 105.300 to 105.440; however, service which under the Social Security Act may be included only upon certification by the governor in accordance with section 218(d)(3) of that act shall be included in the term "employment" if and when the governor issues, with respect to such service, a certificate to the Secretary of Health, Education and Welfare pursuant to section 105.353;
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> * * *
>
> (7) "Instrumentality", an instrumentality of a state or of one or more of its political subdivisions but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or such political subdivision and whose employees are not by virtue of their relation to such juristic entity employees of the state or such subdivision;
>
> (8) "Political subdivision", any county, township, municipal corporation, school district, or other governmental entity of equivalent rank;
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> * * *
>
> (11) "State agency", office of administration, division of accounting;
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> * * *

In Opinion No. 80, Schwada, July 12, 1961, a copy of which is enclosed, this office addressed the questions of whether soil conservation districts (now referred to as soil and water conservation districts) are instrumentalities of the state or its political subdivisions, whether employees of soil conservation districts are covered by OASI as provided in Section 105.310, RSMo 1959, and, if so, if they should be covered by direct agreement between the district and the State Comptroller and Budget Director or by some other method. In that opinion, we concluded that soil conservation districts are instrumentalities of the state because the operation of a

district is a governmental function. We determined that the definition of "instrumentality" in Section 105.300(7), RSMo, imposed three additional requirements on an instrumentality of the state; it must be "(1) a juristic entity which is (2) legally separate and distinct from the state or any political subdivision and (3) whose employees are not by virtue of their relation to such juristic entity employees of the state or any political subdivision." Opinion No. 80, page 4. We concluded that a soil conservation district meets all of these requirements. Employees could be covered pursuant to an agreement between the district and the office of the Comptroller and Budget Director.

Watershed subdistricts are formed pursuant to the provisions of Sections 278.160 to 278.300, RSMo. In Opinion No. 83, Slusher, March 21, 1960, a copy of which is enclosed, we stated:

> The administration of a subdistrict is an activity of the soil conservation district or districts in which the sub[district] shall be located. Such a subdistrict is not a separate legal entity, and the activities carried on therein are those carried on by the soil conservation district or districts in which the subdistrict is located.

Page 4.

Based on these two prior opinions, it is the opinion of this office that employees of a watershed subdistrict can be covered by OASDHI pursuant to an agreement between your office and the soil and water conservation district(s) in which the subdistrict is located.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 80, Schwada, July 12, 1961
Opinion No. 83, Slusher, March 21, 1960

JUVENILE OFFICERS:
OFFICE OF ADMINISTRATION:
WORKERS' COMPENSATION:

Juvenile officers, appointed pursuant to Section 211.351, RSMo 1986, and funded by the State of Missouri pursuant to Section 211.393, RSMo Supp. 1989, are state employees for purposes of the workers' compensation laws; however, other juvenile court personnel are not state employees for purposes of the workers' compensation laws.

August 7, 1990

OPINION NO. 25-90

James R. Moody, Commissioner
Office of Administration
State Capitol Building, Room 125
Jefferson City, Missouri 65101

Dear Commissioner Moody:

This opinion is in response to a question from your office asking:

> Which, if any, of the personnel of the juvenile courts should be considered state employees for purposes of the workers' compensation laws?

In the statement of facts accompanying this question, it is stated:

> With the exception of the juvenile officer, juvenile court employees are initially paid by the county(ies) in the judicial circuit. The state directly pays the salary of the juvenile officers. Senate Bill 622 of the 1988 legislative session establishes a comprehensive plan for state reimbursement to counties of the salaries of juvenile court personnel within prescribed limits. Salaries for purposes of calculations under that legislation do not include fringe benefits. Juvenile court personnel are hired and supervised (directly or indirectly) by circuit court judges of the juvenile division who themselves are state employees.

James R. Moody, Commissioner

Section 211.351, RSMo 1986, provides for the appointment of juvenile court personnel:

> 211.351. Juvenile officers, appointment--costs paid, how.--1. The juvenile court shall appoint a juvenile officer and other necessary juvenile court personnel to serve under the direction of the court in each county of the first and second class and the circuit judge in circuits comprised of third and fourth class counties
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> (1) May appoint a juvenile officer and other necessary personnel to serve the judicial circuit; or
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> (2) Circuit judges of any two or more adjoining circuits may by agreement, confirmed by judicial order, appoint a juvenile officer and other necessary personnel to serve their respective judicial circuits and in such a case the juvenile officers and other persons appointed shall serve under the joint direction of the judges so agreeing.
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> 2. In the event a juvenile officer and other juvenile court personnel are appointed to serve as provided in subdivisions (1) and (2) of subsection 1, the total cost to the counties for the compensation of these persons shall be prorated among the several counties and upon a ratio to be determined by a comparison of the respective populations of the counties.

Section 211.393, RSMo 1986, provided for payment of salaries and expenses of all juvenile court personnel from city or county funds with the exception of the juvenile officer; that position was funded by the State of Missouri.

> 211.393. State to pay salary of full-time juvenile officer--not limit on total compensation--salaries and expenses in certain counties prorated--state to reimburse county, when.--1. The salaries and expenses of all juvenile court

personnel in circuits composed of a single county of the first or second class and in the city of St. Louis are payable monthly out of county or city funds, as the case may be, except that the salary of the juvenile officer of any such circuit in which he is engaged full time is payable in installments, as provided by law, by the state of Missouri, but not to exceed the annual sum provided pursuant to section 211.381. Such annual salary shall be modified by any salary adjustment provided pursuant to section 476.405, RSMo, and is not a limit of the total compensation paid by such county or city or by counties of the second class in circuits composed of two counties of the second class. The payment by the state of Missouri shall be made to either the juvenile officer, or to the county or the city of St. Louis.

2. In circuits composed only of counties of the third and fourth class, and in circuits containing two or more counties, one of which is a first or second class county, the salaries and expenses are payable monthly out of the county funds and prorated among the several counties served upon a ratio determined by a comparison of the respective populations of the counties involved; except that, the salary of the juvenile officer of any such circuit in which he is engaged full time is payable in installments, as provided by law, by the state of Missouri, but not to exceed the annual sum provided pursuant to section 211.381. Such annual salary shall be modified by any salary adjustment provided pursuant to section 476.405, RSMo.

3. The amount of salaries paid by the county in the preceding calendar year pursuant to sections 211.381 and 476.405, RSMo, or the amount of salaries paid by a first class charter county in excess of the amount paid by the first class charter county in the calendar year 1982 and section 476.405, RSMo, in excess of the amount paid by the county in calendar year

> 1982 shall be reimbursed by the state not later than July fifteenth of each year. [Emphasis added.]

House Substitute for Senate Committee Substitute for Senate Bill No. 622, 84th General Assembly, Second Regular Session (1988), significantly amended Section 211.393 to provide state funding for additional juvenile court personnel. Section 211.393, RSMo Supp. 1988, provided as follows:

> 211.393. State to pay juvenile officers, limitation--state to reimburse salaries of all other juvenile court personnel--phase-in program how computed--limitation--audit authorized.--
> 1. The salaries and expenses of all juvenile court personnel in circuits composed of a single county of the first or second class, in any circuit in which one county is a first class county, and in the city of St. Louis are payable monthly out of county or city funds, as the case may be, except that the salary of the juvenile officer of any such circuit in which he is engaged full time is payable in installments, as provided by law, by the state of Missouri, but not to exceed the annual sum provided pursuant to section 211.381. The payment by the state of Missouri shall be made to either the juvenile officer, or to the county or the city of St. Louis.
>
> 2. In circuits, other than those specified in subsection 1 of this section, the salaries and expenses are payable monthly out of the county funds and prorated among the several counties served upon a ratio determined by a comparison of the respective populations of the counties involved; except that, the salary of the juvenile officer of any such circuit in which he is engaged full time is payable in installments, as provided by law, by the state of Missouri, but not to exceed the annual sum provided pursuant to section 211.381.

3. In any circuit specified in subsection 2 of this section, the state shall, beginning on August 13, 1988, reimburse to the counties of the circuit the salary of a chief deputy juvenile officer and one deputy juvenile officer, class 1. The salaries of such officers, as provided in subsections 1, 2, and 3 of section 211.381, shall be reimbursed to the counties of the circuit by the state of Missouri.

4. In addition to any amount paid pursuant to subsection 1 of this section, the state shall also reimburse, subject to appropriations, the following percentages of the salaries of all other juvenile court personnel, excluding fringe benefits:

* * *

6. The term "salaries of all juvenile court personnel excluding fringe benefits" for which the state will reimburse the counties at the percentages specified in this section means the salary provided in subsections 1, 2, and 3 of section 211.381 for a chief deputy juvenile officer and one deputy juvenile officer, class 1, and all other full-time juvenile court personnel included in the initial county budget for calendar year 1988, but excluding all fringe benefits for such personnel. Each county shall file a copy of its initial 1988 budget with the office of administration. The office of administration shall submit the information from the budgets relating to full-time juvenile court personnel from each county to the general assembly. Increases in salary of such full-time juvenile court personnel may be made and paid by the various counties, but, except for the salary of a chief deputy juvenile officer and one deputy juvenile officer, class 1, where authorized, the state shall not reimburse the counties for such increases beyond the number of full-time juvenile court personnel authorized in initial

> county budgets for calendar year 1988, at the salary levels authorized in such budgets that are paid by the state plus any adjustments provided in subsections 2 and 3 of section 211.381, unless an appropriation for such increased reimbursement is requested from the office of administration and made by the general assembly as separate, identifiable appropriation line items. All appropriations shall conform to the percentages specified in this section. All state funds for reimbursement of counties paid pursuant to the provisions of this section shall be used only for juvenile court personnel salaries and for no other purpose.
>
> 7. The state auditor may audit any county or judicial circuit to verify compliance with the requirements of subsections 4 to 6 of this section, including an audit of the 1988 budget of any county. [Emphasis added.]

Section 211.393 was again amended by Conference Committee Substitute for Senate Substitute for House Committee Substitute for House Bills Nos. 502, 503 & 130, 85th General Assembly, First Regular Session (1989), and now reads as follows:

> 211.393. State to pay juvenile officers, limitation--state to reimburse salaries of all other juvenile court personnel--phase-in program how computed--limitation--audit authorized.--1. The salaries and expenses of all juvenile court personnel in circuits composed of a single county of the first class, in any circuit in which one county is a first class county, and in the city of St. Louis are payable monthly out of county or city funds, as the case may be, <u>except that the salary of the juvenile officer of any such circuit in which he is engaged full time is payable in installments, as provided by law, by the state of Missouri</u>, but not to exceed the annual sum provided pursuant to section 211.381. The payment by the state of Missouri shall be made to either the

juvenile officer, or to the county or the city of St. Louis.

2. In circuits, other than those specified in subsection 1 of this section, the salaries and expenses are payable monthly out of the county funds and prorated among the several counties served upon a ratio determined by a comparison of the respective populations of the counties involved; except that, the salary of the juvenile officer of any such circuit in which he is engaged full time is payable in installments, as provided by law, by the state of Missouri, but not to exceed the annual sum provided pursuant to section 211.381.

3. In any circuit specified in subsection 2 of this section, the state shall, beginning on August 13, 1988, reimburse to the counties of the circuit the salary of a chief deputy juvenile officer and one deputy juvenile officer, class 1. The salaries of such officers, as provided in subsections 1, 2, and 3 of section 211.381, shall be reimbursed to the counties of the circuit by the state of Missouri.

4. In addition to any amount paid pursuant to subsection 1 of this section, the state shall also reimburse, subject to appropriations, the following percentages of the salaries of all other juvenile court personnel, excluding fringe benefits:

* * *

If a circuit is comprised of more than one county, any request for reimbursement shall also include a statement in a form as prescribed by the commissioner of administration to indicate how much of the reimbursable expenses of the juvenile court were paid by each county in the circuit.

5. The last reimbursement for salary increases under subsection 3 of this

section as it existed immediately prior to August 13, 1988, shall be made for the period ending on December 31, 1988. After January 1, 1989, reimbursement shall be made to the counties for their actual personnel expenditures under the provisions of this section for each calendar year however, no county shall receive any reimbursement in an amount less than the amount received by such county or the amount the county was entitled to receive, whichever was greater, for the period ending on December 31, 1988. The office of administration shall make payment for the reimbursement from appropriations made for that purpose on or before July fifteenth of each year following the calendar year in which the salaries were paid. If more than one county contributed to the expenses of a juvenile court, each of such counties shall be reimbursed in the same proportion as its contribution.

6. The term "salaries of all juvenile court personnel excluding fringe benefits" for which the state will reimburse the counties at the percentages specified in this section means the salary provided in subsections 1, 2, and 3 of section 211.381 for a chief deputy juvenile officer and one deputy juvenile officer, class 1, and all other full-time juvenile court personnel included in the initial county budget for calendar year 1988, but excluding all fringe benefits for such personnel. Each county shall file a copy of its initial 1988 budget with the office of administration. The office of administration shall submit the information from the budgets relating to full-time juvenile court personnel from each county to the general assembly. Increases in salary of such full-time juvenile court personnel may be made and paid by the various counties, but, except for the salary of a chief deputy juvenile officer and one deputy juvenile officer, class 1, where authorized, the state shall not reimburse the counties for such increases

> beyond the number of full-time juvenile court personnel authorized initial county budgets for calendar year 1988, at the salary levels authorized in such budgets that are paid by the state plus any adjustments provided in subsections 2 and 3 of section 211.381, unless an appropriation for such increased reimbursement is requested from the office of administration and made by the general assembly as separate, identifiable appropriation line items. All appropriations shall conform to the percentages specified in this section. All state funds for reimbursement of counties paid pursuant to the provisions of this section shall be used only for juvenile court personnel salaries and for no other purpose.
>
> 7. The state auditor may audit any county or judicial circuit to verify compliance with the requirements of subsections 4 to 6 of this section, including an audit of the 1988 budget of any county. [Emphasis added.]

Given this statutory framework, with respect to juvenile officers it is necessary to determine whether, within the context of workers' compensation law, an employer-employee relationship exists between the State of Missouri and juvenile officers. Responsibility for salaries is recognized as a relevant factor, "but payment alone does not create an employer-employee relationship." Hill v. 24th Judicial Circuit, 765 S.W.2d 329, 331 (Mo. App. 1989). The factors to consider in deciding if an employer-employee relationship exists are "whether the claimant was performing services for the alleged employer and whether the services were controllable by the alleged employer." Id.

In Hawkins v. Missouri State Employees' Retirement System, 487 S.W.2d 580 (Mo. App. 1972), the Court of Appeals faced a similar question when it was asked to determine whether court reporters were state employees entitled to participate in the Missouri State Employees' Retirement System. The court opined:

> the Court Reporter is an "officer of the court" and for purposes of present analysis stands in the same relationship to the

> State as the judge of the court who appointed him. The law of Missouri is now settled that circuit judges "'are judges of the State of Missouri and not merely judges of the circuit in which they are elected or appointed.'" . . . [citation omitted]. Since the circuit judge is an officer or employee of the State, rather than of the County in which his court is located, so also it must follow that the Court Reporter appointed by him and who devotes his time exclusively to the circuit judge is also a "state employee".

Id., 487 S.W.2d at 582.

However, the final deciding factor in the court's analysis was a statutory change making the state responsible for reimbursement of part of the salary of court reporters. "The change in salary arrangement whereby the State did assume direct payment of at least a portion of the salary fortifies the conclusion that the Court Reporter has become an 'employee of the state'." Id.

In Attorney General Opinion No. 281, Volkmer, 1974, a copy of which is enclosed, this office applied the analysis of Hawkins, supra, to the question of whether juvenile officers and deputy juvenile officers are entitled to participate in the Missouri State Employees' Retirement System. We concluded:

> a juvenile officer is entitled to membership and prior membership credit in the Missouri State Employees' Retirement System. However, it is our view that the situation as to deputy juvenile officers is different. . . . The reason being that Section 211.393 does not provide that these individuals are to be paid by the state. [Emphasis in original.]

Id., p. 5.

Similarly, in Cates v. Webster, 727 S.W.2d 901 (Mo. banc 1987), a case involving eligibility of a circuit court bailiff for coverage under the State Legal Expense Fund, the Missouri Supreme Court recognized:

> the Attorney General's office has represented those persons holding positions within the circuit court level of the

> judicial system whose salaries and fringe benefits are provided from state funds. These have included circuit judges, circuit clerks, deputy circuit clerks, court reporters for circuit courts, and juvenile officers. On the other hand the Attorney General has refused to represent those not compensated from state funds, such as deputy juvenile officers. . . . [Emphasis added.]

Id., 727 S.W.2d at 903.

The court concluded that Missouri statutes, using Section 483.083 concerning compensation of circuit clerks as an example, "exhibit a legislative intent, in apportioning duties and liabilities between the state and counties, to consider as state employees those judicial personnel paid by the state and to consider as nonstate employees those judicial personnel paid by the county." Id., 727 S.W.2d at 905-906. Therefore, although the circuit court bailiff was controlled exclusively by the circuit court, the Missouri Supreme Court concluded he was a county, rather than state, employee since his position was wholly funded by the county. Id. at 907.

Based upon the foregoing, we conclude that a juvenile officer, whose salary is wholly funded by the State of Missouri, as provided in Section 211.393, is a state employee for purposes of the workers' compensation laws.

However, a different conclusion must be reached for the chief deputy juvenile officer and one deputy juvenile officer, class 1, despite the funding provided for in Section 211.393.3, and the other court personnel partially funded by the State pursuant to Section 211.393.4. Section 211.393.6, defines the term "'salaries of all juvenile court personnel excluding fringe benefits' for which the state will reimburse the counties" as "the salary provided in subsections 1, 2, and 3 of section 211.381 for a chief deputy juvenile officer and one deputy juvenile officer, class 1, and all other full-time juvenile court personnel included in the initial county budget for calendar year 1988, but excluding all fringe benefits for such personnel." [Emphasis added.]

Legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Websters' New World Dictionary, Second College Edition, defines "fringe benefit" as "a payment other than wages

or salary made to an employee, as in the form of a pension, vacation, insurance, etc." Although Section 211.393 provides state reimbursement toward salaries of other juvenile court personnel, such section specifically excludes all fringe benefits for such personnel. We conclude that the legislature intended that the State's contribution be limited to salary of juvenile court personnel other than the juvenile officer. Therefore, other juvenile court personnel are not state employees for the purposes of the workers' compensation laws.

CONCLUSION

It is the opinion of this office that juvenile officers, appointed pursuant to Section 211.351, RSMo 1986, and funded by the State of Missouri pursuant to Section 211.393, RSMo Supp. 1989, are state employees for purposes of the workers' compensation laws; however, other juvenile court personnel are not state employees for purposes of the workers' compensation laws.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 281, Volkmer, 1974

ATTORNEY GENERAL OF MISSOURI

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May 24, 1990

OPINION LETTER NO. 26-90

Frank V. DiMaggio
Ste. Genevieve County Prosecuting Attorney
P.O. Box 406
Ste. Genevieve, Missouri 63670

Dear Mr. DiMaggio:

This opinion letter is in response to your questions asking:

> a) whether it is legally permissible for the County Commission of Ste. Genevieve County, as the county governing body, to provide the cost of whole life insurance for elected officials and/or employees, and
>
> b) whether it is then legally permissible for those participating elected officials (under the whole life insurance policies) to be named as owners of said policies and/or to retain any cash values accruing under such a whole life insurance policy.

Your opinion request makes reference to a state audit declaring this practice improper with respect to certain elected county officials. In State Auditor's Report No. 88-164, December 22, 1988, Ste. Genevieve County, Missouri, Two Years Ended December 31, 1987, at pages 86-87, the state auditor recommended that the county discontinue purchasing life insurance for certain elected county officials. The state auditor concluded that since the policies purchased represented whole life insurance which builds a cash value, the county was providing additional compensation to those elected officials in violation of Missouri law. The state auditor recommended that the County Commission should either seek reimbursement from the elected officials in the amount which was expended in premiums, or terminate the policies and seek reimbursement of their cash value.

Frank V. DiMaggio

Section 49.278, RSMo 1986, provides:

> 49.278. Governing body may provide insurance for county employees, procedure.--1. The county governing body in all counties may contribute to the cost of a plan, including a plan underwritten by insurance, for furnishing all or a part of hospitalization or medical expenses, life insurance, or similar benefits for elected officials and their employees, and to appropriate and utilize its revenues and other available funds for these purposes.
>
> 2. No contract shall be entered into by the county to purchase any insurance policy or policies pursuant to the terms of this section unless such contract shall have been submitted to competitive bidding and such contract be awarded to the lowest and best bidder.

Section 67.150, RSMo 1986, provides:

> 67.150. Insurance for elected officials and employees, political subdivision may contribute--contracting procedure.--1. The governing body of any political subdivision may utilize the revenues and other available funds of the subdivision, as a part of the compensation of the elected officials and employees of the subdivision, to contribute to the cost of a plan, including a plan underwritten by insurance, for furnishing all or part of hospitalization or medical expenses, life insurance or similar benefits for the subdivision's elected officials and employees.
>
> 2. No contract shall be entered into by the governing body of the political subdivision to purchase any insurance policy or policies pursuant to the terms of this section unless the contract is submitted to competitive bidding at least every three years and the contract is awarded to the lowest and best bidder.

Although your questions concern both county employees and elected county officials, the applicable section of the state auditor's report which you question referred solely to elected county officials. The distinction between county employees and elected county officials is an important one because Missouri statutes establish the procedure for determining the amount of compensation to be paid to the elected county officials referred to in the state auditor's report. See Section 50.333, RSMo Supp. 1989.

With respect to the elected county officials referred to in the state auditor's report, it is well settled that the "right to compensation for the discharge of official duties is purely a creature of statute." Crites v. Huckstep, 619 S.W.2d 328, 330 (Mo.App. 1981). Accordingly, "a public officer claiming compensation for official duties must rely on a statute authorizing payment." State ex rel. Igoe v. Bradford, 611 S.W.2d 343, 350 (Mo.App. 1980). Statutes which grant public officials compensation are strictly construed against the officials. Becker v. St. Francois County, 421 S.W.2d 779, 783 (Mo. 1967).

Both Sections 49.278 and 67.150 authorize county governing bodies to provide insurance for county elected officials and their employees, although neither section authorizes elected officials to retain the cash value of a life insurance policy. The compensation of the county elected officials referred to in the state auditor's report is specifically provided by statute; therefore, we conclude the county elected officials whose salaries are specified by statute may not receive the cash value of the life insurance policy which has been provided by the county.

With respect to county employees whose salaries are not set by statute, there is no state statutory prohibition regarding an employee retaining the cash value of the whole life insurance policy. We therefore conclude that the county may name an employee as owner of the whole life insurance policy and the employee may retain any cash value accruing under such a policy.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

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March 29, 1990

OPINION LETTER NO. 28-90

The Honorable George Dames
Representative, District 17
State Capitol Building, Room 300B
Jefferson City, Missouri 65101

Dear Representative Dames:

This opinion letter is in response to your question asking:

> As used in section 67.550, RSMo Supp. 1988, what does the term "maintenance" include?

We have not been provided a list of particular expenditures to review to determine if each constitutes "maintenance;" therefore, we will have to address your question in general terms.

Section 67.550.3, RSMo Supp. 1989, provides:

> 67.550. Sales tax imposed in certain first class counties--rate of tax--election procedure--revenue to be used to build and maintain certain facilities--effective when--terminates when (St. Charles and Jefferson Counties).--
>
> * * *
>
> 3. All revenue received by a county from the tax authorized under the provisions of sections 67.550 to 67.580 shall be deposited in a special trust fund and shall be used solely for the construction of a jail, a juvenile facility, a sheriff's office, county administrative and judicial capital improvements, county park development,

> parking facilities and physical improvements related thereto within such county for so long as the tax shall remain in effect. Once the tax authorized by sections 67.550 to 67.580 is abolished or is terminated by any means, all funds remaining in the special trust fund shall be used solely for the maintenance of the facilities and buildings constructed with revenues raised by the tax authorized by sections 67.550 to 67.580. Any funds in such special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other county funds. [Emphasis added.]

* * *

While "maintenance" has been defined in other contexts, the legislature has provided no definition for this provision. See Sections 227.210 and 290.210(4), RSMo 1986. Thus, we must construe this word within the context of Chapter 67, RSMo. The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988).

The word "maintenance" has been defined as:

> "a maintaining or being maintained; upkeep, support, . . . the work of keeping a building, machinery, etc. in a state of good repair. . . ."

Webster's New World Dictionary, Second College Edition, 1980, page 854.

The word "maintain" has been defined as:

> "1. to keep or keep up; continue in or with; carry on 2. a) to keep in existence or continuance . . . b) to keep in a certain condition or position, esp. of efficiency, good repair, etc.; preserve . . ."

The Honorable George Dames

Webster's New World Dictionary, Second College Edition, 1980, page 854.

The language in Section 67.550.3 refers to the maintenance of the facilities and buildings constructed with revenues raised pursuant to that statute. The maintenance of those facilities and buildings would thus include any expenditures for the purposes of upkeep and to keep the facilities and buildings in a state of good repair.

It is the opinion of this office that the word "maintenance" in Section 67.550.3, RSMo Supp. 1989, includes expenditures for the purposes of upkeep and to keep the facilities and buildings in a state of good repair.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

FIRE HYDRANTS:
FIRE PROTECTION - FIRE PROTECTION DISTRICTS:
PUBLIC WATER SUPPLY DISTRICTS:
WATER LINES:

A fire protection district has the power under Chapter 321, RSMo, by a properly enacted ordinance to require a public water supply district to include fire hydrants when installing water mains within the fire protection district boundaries or updating or upgrading the water mains.

April 5, 1990

OPINION NO. 31-90

The Honorable Bill McKenna
Representative, District 105
State Capitol Building, Room 305A
Jefferson City, Missouri 65101

Dear Representative McKenna:

This opinion is in response to your questions asking:

> Does a fire district have the power under Chapter 321, RSMo, by a properly enacted ordinance, to require a water district to include fire hydrants when installing water mains within the fire district boundaries? Furthermore, could the fire district, by a properly enacted ordinance, require hydrants when mains are updated or upgraded?

In Missouri Attorney General Opinion Letter No. 72-87, a copy of which is enclosed, this office addressed the question of whether a fire protection district has the power by a properly enacted ordinance to require a municipality to include fire hydrants when installing water lines through the district. That opinion cited the broad delegation of powers to fire protection districts in the areas of fire protection and prevention including, among others, subsections (12) and (14) of Section 321.220, RSMo. Section 321.220, RSMo Supp. 1989, provides in part:

> 321.220. Powers of board.--For the purpose of providing fire protection to the property within the district, the district and, on its behalf, the board shall have the following powers, authority and privileges:
>
> * * *
>
> (12) To adopt and amend bylaws, fire protection and fire prevention ordinances, and any other rules and regulations not in conflict with the constitution and laws of this state, necessary for the carrying on of the business, objects and affairs of the board and of the district, and refer to the proper authorities for prosecution any infraction thereof detrimental to the district. . . .
>
> * * *
>
> (14) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter;
>
> * * *

See also Section 321.600(12) and (14), RSMo Supp. 1989. The opinion further cited Missouri court decisions indicating a fire protection district has paramount authority with respect to fire prevention and protection. The opinion concluded a fire protection district did have the power under Chapter 321, RSMo, by properly enacted ordinance to require a municipality to include fire hydrants when installing water lines through the district.

In Schlett v. Antonia Fire Protection District, 685 S.W.2d 589 (Mo. App. 1985), the Missouri Court of Appeals considered whether a fire protection district could enforce an ordinance requiring property owners to provide at their expense a fire hydrant to protect their neighborhood. The court concluded such ordinance was arbitrary and unreasonable as to the property owners. In discussing the powers of a fire protection district, the court stated:

Section 321.600 RSMo 1978 (Cum. Supp. 1982) grants the district certain powers including authority to pass ordinances for fire prevention and fire protection "not in conflict with the constitution and laws of this state." That power has been upheld as it applies to ordinances proscribing certain types of building materials, R.A. Vorhof Const. Co. v. Black Jack Fire District, 454 S.W.2d 588 (Mo. App. 1970); to ordinances requiring building permits and setting a general building code, Community Fire Protection District v. Board of Education, 315 S.W.2d 873 (Mo. App. 1958); to ordinances providing for inspection and approval of new buildings or structures, Easy Living Mobile Manor, Inc., v. Eureka Fire Protection District, 513 S.W.2d 736 (Mo. App. 1974); Wellston Fire Protection District v. State Bank and Trust Company, 282 S.W.2d 171 (Mo. App. 1955); to ordinances limiting or restricting usage of buildings in which fire hazards exist, Bellerive Inv. Co. v. Kansas City, 321 Mo. 969, 13 S.W.2d 628 (1929), Kalbfell v. City of St. Louis, 357 Mo. 986, 211 S.W.2d 911 (1948). Fire districts also have the authority to procure water and hydrants, Waterworks Co. v. Webb City, 78 Mo.App. 422 (1899).

[2, 3] All of the cases, however, recognize that an ordinance must meet the test of reasonableness. That determination may be based on the face of the ordinance or on a state of facts which affects its operation. Stegmann v. Weeke, 279 Mo. 140, 214 S.W. 137 (1919) [3, 4]. In determining the reasonableness of fire protection ordinances the court is justified in assessing whether the use of the property by its owner seriously affects the general public and society or is a detriment to that society. Bellerive Inv. Co. v. Kansas City, supra, [20]. While an ordinance may be valid in its general aspects, as to a particular state of facts involving a particular owner affected thereby, it may be so clearly arbitrary and

> unreasonable as to be unenforceable. Wilson v. City of Waynesville, 615 S.W.2d 640 (Mo. App. 1981) [6-8].
>
> [4] We find it unnecessary to determine the general extent of the district's authority to require by ordinance the providing of fire hydrants by developers of property. We need simply say that the ordinance here requiring plaintiffs to provide at their expense, as a precondition to the use of their property, a fire hydrant to protect their neighbors is arbitrary and unreasonable as to plaintiffs. Their home and property presents no unusual fire hazard that would justify imposing on them the financial obligation to provide fire protection for the neighborhood.

Id. at 590-591.

In considering the questions posed in your opinion request, we conclude a fire protection district is authorized to require a public water supply district to include fire hydrants when installing water mains within the fire protection district boundaries or updating or upgrading the water mains. As discussed in the prior opinion of this office referred to previously and the cases cited therein, fire protection districts have broad powers in the areas of fire protection and prevention. While the court in Schlett v. Antonia Fire Protection District, supra, held requiring a particular property owner to provide at his expense a fire hydrant for the neighborhood was unreasonable, the situations posed by your questions are not analogous. The situations posed by your questions are more closely related to the situation addressed in Opinion Letter No. 72-87, and we believe the reasoning in that opinion is equally applicable to your questions. Therefore, we conclude a fire protection district has the power under Chapter 321, RSMo, by a properly enacted ordinance to require a public water supply district to include fire hydrants when installing water mains within the fire protection district boundaries or updating or upgrading the water mains.

CONCLUSION

It is the opinion of this office that a fire protection district has the power under Chapter 321, RSMo, by a properly enacted ordinance to require a public water supply district to include fire hydrants when installing water mains within the fire protection district boundaries or updating or upgrading the water mains.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure:
Opinion Letter No. 72-87

CITIES, TOWNS AND VILLAGES:
FOURTH CLASS CITIES:
LIQUOR:

1) The City of Lakeview, a fourth class city of less than five hundred inhabitants, pursuant to Section 311.090, RSMo 1986, can hold an election on the question of whether the sale of intoxicating liquor, with certain exceptions, by the drink at retail for consumption on the premises where sold shall be permitted, 2) can regulate the sale of intoxicating liquor provided the regulations are in harmony with state law and 3) is not authorized to tax intoxicating liquor except as provided in Section 311.220, RSMo 1986.

June 11, 1990

OPINION NO. 33-90

The Honorable Doyle Childers
Representative, District 132
State Capitol Building, Room 102B
Jefferson City, Missouri 65101

Dear Representative Childers:

This opinion is in response to your questions asking:

1. Does the City of Lakeview have the authority to regulate, license and tax intoxicating liquors and beverages?

2. May the City of Lakeview license and tax such state licensed establishments such as resorts and restaurant-bars?

3. To what extent may the City of Lakeview tax such establishments?

In your opinion request, you ask whether Missouri Attorney General Opinion No. 99, McCubbin, 1968 (hereinafter "Opinion No. 99"), a copy of which is enclosed, applies to your questions in light of subsequent legislation. We note that the City of Lakeview is a fourth class city.

In Opinion No. 99 this office concluded that the City of Lake Ozark, having a population of less than 500, did not qualify to have an election as provided under Section 311.090, RSMo 1959, and could not require a license from any resort or business selling intoxicating liquor by the drink on licensed

premises within the city limits. Opinion No. 99 was based on Section 311.090, RSMo 1959, which provided in part:

> 311.090. Sale of liquor by drink, where legal-bond of licensee--1. Any person who possesses the qualifications required by this chapter, and who meets the requirements of and complies with the provisions of this chapter, and the ordinances, rules and regulations of the incorporated city in which such licensee proposes to operate his business, may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as in this chapter defined, by the drink at retail for consumption on the premises described in the application; provided, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five per cent by weight, by the drink at retail for consumption on the premises where sold, in any incorporated city having a population of less than twenty thousand inhabitants, until the sale of such intoxicating liquor, by the drink at retail for consumption on the premises where sold, shall have been authorized by a vote of the majority of the qualified voters of said city. Such authority to be determined by an election to be held in said cities having a population of less than twenty thousand inhabitants, under the provisions and methods set out in this chapter. The population of said cities to be determined by the last census of the United States completed before the holding of said election; provided further, that for the purpose of this law, the term "city" shall be construed to mean any municipal corporation having a population of five hundred inhabitants or more; provided further, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five per cent by weight, by the drink at retail for consumption on the premises where sold, outside the limits

> of such incorporated cities. [Emphasis added.]
>
> * * *

This section has been amended and now provides as follows:

> 311.090. Sale of liquor by the drink, cities, requirements--Sunday sales authorized for certain organizations.--1. Any person who possesses the qualifications required by this chapter, and who meets the requirements of and complies with the provisions of this chapter, and the ordinances, rules and regulations of the incorporated city in which such licensee proposes to operate his business, may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as in this chapter defined, by the drink at retail for consumption on the premises described in the application; provided, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five percent by weight, and light wines containing not in excess of fourteen percent of alcohol by weight made exclusively from grapes, berries and other fruits and vegetables, by the drink at retail for consumption on the premises where sold to any person other than a charitable, fraternal, religious, service or veterans' organization which has obtained an exemption from the payment of federal income taxes as provided in section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the United States Internal Revenue Code of 1954, as amended, in any incorporated city having a population of less than twenty thousand inhabitants, until the sale of such intoxicating liquor, by the drink at retail for consumption on the premises where sold, shall have been authorized by a vote of the majority of the qualified voters of the city. Such authority shall be determined by an election to be held in those cities having a population of less

than twenty thousand inhabitants as determined by the last preceding federal decennial census, under the provisions and methods set out in this chapter. No license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five percent by weight, by the drink at retail for consumption on the premises where sold, outside the limits of such incorporated cities unless the licensee is a charitable, fraternal, religious, service or veterans' organization which has obtained an exemption from the payment of federal income taxes as provided in section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the United States Internal Revenue Code of 1954, as amended.

2. Notwithstanding any other provisions of this chapter to the contrary, any charitable, fraternal, religious, service or veterans' organization which has obtained an exemption from the payment of federal income taxes as provided in section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the United States Internal Revenue Code of 1954, as amended, may apply for, and the supervisor of liquor control may issue, a license to sell intoxicating liquor, as defined in this chapter, between the hours of 12:00 noon on Sunday and midnight on Sunday by the drink at retail for consumption on the premises described in the application. The authority for the collection of fees by cities and counties as provided in section 311.220, and all other laws and regulations of the state relating to the sale of liquor by the drink for consumption on the premises where sold, shall apply to organizations licensed under this subsection in the same manner as they apply to establishments licensed under subsection 1 of this section and sections 311.085 and 311.095. In addition to all other fees required by law, an organization licensed under this section shall pay an

> additional fee of two hundred dollars a year payable at the same time and in the same manner as its other license fees.

Because the amendment removed the requirement that a city have a population of five hundred inhabitants or more, the City of Lakeview, under the provisions of this section, can hold an election on the question of whether the sale of intoxicating liquor, with certain exceptions, by the drink at retail for consumption on the premises where sold shall be permitted. Therefore, we are withdrawing Opinion No. 99.

The extent to which a city can regulate and license is described in Section 311.220, RSMo 1986:

> 311.220. Counties and cities may charge for licenses--amount.--1. In addition to the permit fees and license fees and inspection fees by this law required to be paid into the state treasury, every holder of a permit or license authorized by this law shall pay into the county treasury of the county wherein the premises described and covered by such permit or license are located, or in case such premises are located in the city of St. Louis, to the collector of revenue of said city, a fee in such sum not in excess of the amount by this law required to be paid into the state treasury for such state permit or license, as the county commission, or the corresponding authority in the city of St. Louis, as the case may be, shall by order of record determine, and shall pay into the treasury of the municipal corporation, wherein said premises are located, a license fee in such sum, not exceeding one and one-half times the amount by this law required to be paid into the state treasury for such state permit or license, as the lawmaking body of such municipality, including the city of St. Louis may by ordinance determine.
>
> 2. The board of aldermen, city council or other proper authorities of incorporated cities, may charge for licenses issued to manufacturers, distillers, brewers, wholesalers and retailers of all

> intoxicating liquor, located within their limits, fix the amount to be charged for such license, subject to the limitations of this law, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of all intoxicating liquors within their limits, provide for penalties for the violation of such ordinances, where not inconsistent with the provisions of this law.

Pursuant to these provisions, "[c]ourts have held that the enactment and enforcement by local authorities of ordinances regulating the sale of alcoholic beverages, in situations where the state statutes were silent on the subject, were a valid exercise of the power granted by the state to the local community." State ex rel. Casey's General Stores, Inc. v. Downing, 757 S.W.2d 1, 2 (Mo. App. 1988). Any municipal ordinance regulating the subject of intoxicating beverages and non-intoxicating beer must be in harmony with the state law on those subjects, and are invalid to the extent that they conflict with the state law. Mid-State Distributing Company v. City of Columbia, 617 S.W.2d 419, 430 (Mo. App. 1981); Passler v. Johnson, 304 S.W.2d 903, 907 (Mo. 1957).

As to the matter of a municipality taxing liquor establishments, the Missouri Supreme Court has concluded that imposition of such a tax is beyond the powers of a municipality. See John Bardenheier Wine & Liquor Co. v. City of St. Louis, 135 S.W.2d 345, 348 (Mo. banc 1939); Allstate Distributors, Inc. v. Norfleet, 750 S.W.2d 73 (Mo. banc 1988). In Allstate, the Court opined:

> Clearly, the state preempted the regulation and taxation of liquor when it granted to municipalities and counties by § 311.220 only the power to issue a business license in the amount therein limited and to make regulations not inconsistent with the provisions of the Liquor Control Law. In all of our statutes there is not a more exhaustive and all comprehensive regulatory act.

Id., 750 S.W.2d at 76.

The Honorable Doyle Childers

CONCLUSION

It is the opinion of this office that: 1) the City of Lakeview, a fourth class city of less than five hundred inhabitants, pursuant to Section 311.090, RSMo 1986, can hold an election on the question of whether the sale of intoxicating liquor, with certain exceptions, by the drink at retail for consumption on the premises where sold shall be permitted, 2) can regulate the sale of intoxicating liquor provided the regulations are in harmony with state law and 3) is not authorized to tax intoxicating liquor except as provided in Section 311.220, RSMo 1986.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 99, McCubbin, 1968

CITIES, TOWNS AND VILLAGES: Cities which levy a tax for
CITY FUNDS: parks pursuant to
CITY PARKS: Section 90.500, RSMo 1986,
may not impose an
administrative service fee on the park fund for processing
checks and providing accounting services for the park fund.

January 23, 1990

OPINION NO. 34-90

The Honorable Martha F. Jarman
Representative, District 29
State Capitol Building, Room 412A
Jefferson City, Missouri 65101

Dear Representative Jarman:

This opinion is in response to your question asking:

> Is it legally permissible for a city which levies a tax for parks pursuant to Section 90.500, RSMo 1986, to impose an administrative service fee on the park fund for processing checks and providing accounting service for the park fund?

Section 90.500, RSMo 1986 provides:

> 90.500. Parks--petition--tax rate--election--form of ballot (certain cities).--1. When one hundred voters of any incorporated city or town having less than thirty thousand inhabitants, or any city of the third class, shall petition the mayor and common council asking that an annual tax be levied for the establishment and maintenance of free public parks in the incorporated city or town, and providing for suitable entertainment therein, and shall specify in their petition a rate of taxation as provided in this section not to exceed forty cents per year on each one hundred dollars of assessed valuation, the mayor and common council shall submit the question to the voters.
>
> 2. The question shall be submitted in substantially the following form:

> Shall a . . . . . cent tax per one hundred dollars assessed valuation be levied for public parks?
>
> * * *
>
> [Emphasis added.]

Section 90.550, RSMo 1986 provides in part that:

> All moneys received for such parks shall be deposited in the treasury of said city or town to the credit of the park fund and shall be kept separate and apart from the other moneys of such city or town and drawn upon by the proper officers of said city or town upon the properly authenticated vouchers of the park board.

"A municipal corporation . . . is a creature of the legislature, possessing only those powers expressly granted or those necessarily or fairly implied in or incidental to express grants, or those essential to the declared objects of the municipality. [Citation omitted.] Any reasonable doubt as to whether a power has been delegated to a municipality is resolved in favor of nondelegation." Anderson v. City of Olivette, 518 S.W.2d 34, 39 (Mo. 1975). For a municipality to impose an administrative service fee on a city park fund some statutory provision must exist that grants such authority to the municipality. If no authority exists, then such a fee cannot be charged.

It is well settled that money gathered for a specific purpose cannot be legally used for another purpose. Stephens v. Bragg City, 27 S.W.2d 1063 (Spr. Ct. App. 1930). Section 90.500, RSMo 1986 gives certain cities the authority to levy a tax only for certain park purposes. The money collected pursuant to such section cannot be spent on anything other than the specified park purposes.

Section 50.515, RSMo 1986 allows counties to impose an administrative service fee on a county park fund for various services, including accounting services, relating to the management of the fund itself. No similar provision can be found which allows cities to impose such a fee on a city park fund. Presumably, if the General Assembly wished to allow cities to impose an administrative service fee on a city park fund, it would have done so explicitly. The fact that no similar provision exists authorizing cities to impose an

administrative service fee indicates that cities do not have the authority to impose such a fee on a city park fund.

CONCLUSION

It is the opinion of this office that cities which levy a tax for parks pursuant to Section 90.500, RSMo 1986, may not impose an administrative service fee on the park fund for processing checks and providing accounting services for the park fund.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

DEPUTY JUVENILE OFFICERS:
JUVENILE OFFICERS:
STATE LEGAL EXPENSE FUND:

Deputy juvenile officers and juvenile detention facility personnel are not covered by the State Legal Expense Fund, Section 105.711, RSMo.

October 9, 1990

OPINION NO. 39-90

Joe Moseley
Boone County Prosecuting Attorney
Boone County Courthouse
Columbia, Missouri 65201

Dear Mr. Moseley:

This opinion is in response to your questions asking:

1. Are deputy juvenile officers employed by the Juvenile Division of the Circuit Court for the Thirteenth Judicial Circuit "appointees or employees" within the meaning of Section 105.711 RSMo. and therefore covered by the State Legal Expense Fund?

2. Are juvenile detention facility personnel appointed by the Juvenile Division of the Circuit Court "appointees or employees" within the meaning of Section 105.711 RSMo. and therefore covered under the State Legal Expense Fund?

Section 105.711 as enacted by Conference Committee Substitute for House Committee Substitute for Senate Bill No. 765, 85th General Assembly, Second Regular Session (1990) provides in pertinent part:

> 105.711. Legal expense fund created--officers, employees, agencies, certain physicians covered, procedure--certain claims, limitations--funds not transferable to general revenue.--1. There

> is hereby created a "State Legal Expense Fund" which shall consist of moneys appropriated to the fund by the general assembly and moneys otherwise credited to such fund pursuant to section 105.716.
>
> 2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:
>
> * * *
>
> (2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo; or
>
> * * *

Section 211.351, RSMo 1986, provides for the appointment of juvenile court personnel:

> 211.351. Juvenile officers, appointment--costs paid, how.--1. The juvenile court shall appoint a juvenile officer and other necessary juvenile court personnel to serve under the direction of the court in each county of the first and second class and the circuit judge in circuits comprised of third and fourth class counties
>
> (1) May appoint a juvenile officer and other necessary personnel to serve the judicial circuit; or
>
> (2) Circuit judges of any two or more adjoining circuits may by agreement,

> confirmed by judicial order, appoint a juvenile officer and other necessary personnel to serve their respective judicial circuits and in such a case the juvenile officers and other persons appointed shall serve under the joint direction of the judges so agreeing.
>
> 2. In the event a juvenile officer and other juvenile court personnel are appointed to serve as provided in subdivisions (1) and (2) of subsection 1, the total cost to the counties for the compensation of these persons shall be prorated among the several counties and upon a ratio to be determined by a comparison of the respective populations of the counties.

Section 211.393, RSMo 1986, provided for payment of salaries and expenses of all juvenile court personnel from city or county funds with the exception of the juvenile officer; that position was funded by the State of Missouri. However, Section 211.393 has since been amended by House Substitute for Senate Committee Substitute for Senate Bill No. 622, 84th General Assembly, Second Regular Session (1988) and by Conference Committee Substitute for Senate Substitute for House Committee Substitute for House Bills Nos. 502, 503 & 130, 85th General Assembly, First Regular Session (1989). It now provides as follows:

> 211.393. State to pay juvenile officers, limitation--state to reimburse salaries of all other juvenile court personnel--phase-in program how computed--limitation--audit authorized.--1. The salaries and expenses of all juvenile court personnel in circuits composed of a single county of the first class, in any circuit in which one county is a first class county, and in the city of St. Louis are payable monthly out of county or city funds, as the case may be, <u>except that the salary of the juvenile officer of any such circuit in which he is engaged full time is payable in installments, as provided by law, by the state of Missouri</u>, but not to exceed the annual sum provided pursuant to section 211.381. The payment by the state

of Missouri shall be made to either the juvenile officer, or to the county or the city of St. Louis.

2. In circuits, other than those specified in subsection 1 of this section, the salaries and expenses are payable monthly out of the county funds and prorated among the several counties served upon a ratio determined by a comparison of the respective populations of the counties involved; except that, the salary of the juvenile officer of any such circuit in which he is engaged full time is payable in installments, as provided by law, by the state of Missouri, but not to exceed the annual sum provided pursuant to section 211.381.

3. In any circuit specified in subsection 2 of this section, the state shall, beginning on August 13, 1988, reimburse to the counties of the circuit the salary of a chief deputy juvenile officer and one deputy juvenile officer, class 1. The salaries of such officers, as provided in subsections 1, 2, and 3 of section 211.381, shall be reimbursed to the counties of the circuit by the state of Missouri.

4. In addition to any amount paid pursuant to subsection 1 of this section, the state shall also reimburse, subject to appropriations, the following percentages of the salaries of all other juvenile court personnel, excluding fringe benefits:

* * *

If a circuit is comprised of more than one county, any request for reimbursement shall also include a statement in a form as prescribed by the commissioner of administration to indicate how much of the reimbursable expenses of the juvenile court were paid by each county in the circuit.

5. The last reimbursement for salary increases under subsection 3 of this section as it existed immediately prior to August 13, 1988, shall be made for the period ending on December 31, 1988. After January 1, 1989, reimbursement shall be made to the counties for their actual personnel expenditures under the provisions of this section for each calendar year however, no county shall receive any reimbursement in an amount less than the amount received by such county or the amount the county was entitled to receive, whichever was greater, for the period ending on December 31, 1988. The office of administration shall make payment for the reimbursement from appropriations made for that purpose on or before July fifteenth of each year following the calendar year in which the salaries were paid. If more than one county contributed to the expenses of a juvenile court, each of such counties shall be reimbursed in the same proportion as its contribution.

6. The term "salaries of all juvenile court personnel excluding fringe benefits" for which the state will reimburse the counties at the percentages specified in this section means the salary provided in subsections 1, 2, and 3 of section 211.381 for a chief deputy juvenile officer and one deputy juvenile officer, class 1, and all other full-time juvenile court personnel included in the initial county budget for calendar year 1988, but excluding all fringe benefits for such personnel. Each county shall file a copy of its initial 1988 budget with the office of administration. The office of administration shall submit the information from the budgets relating to full-time juvenile court personnel from each county to the general assembly. Increases in salary of such full-time juvenile court personnel may be made and paid by the various counties, but, except for the salary of a chief deputy juvenile officer and one deputy juvenile officer, class 1,

> where authorized, the state shall not reimburse the counties for such increases beyond the number of full-time juvenile court personnel authorized initial county budgets for calendar year 1988, at the salary levels authorized in such budgets that are paid by the state plus any adjustments provided in subsections 2 and 3 of section 211.381, unless an appropriation for such increased reimbursement is requested from the office of administration and made by the general assembly as separate, identifiable appropriation line items. All appropriations shall conform to the percentages specified in this section. All state funds for reimbursement of counties paid pursuant to the provisions of this section shall be used only for juvenile court personnel salaries and for no other purpose.
>
> 7. The state auditor may audit any county or judicial circuit to verify compliance with the requirements of subsections 4 to 6 of this section, including an audit of the 1988 budget of any county. [Emphasis added.]

In Attorney General Opinion No. 34-85, a copy of which is enclosed, we concluded that circuit clerks, other than the Circuit Clerk of the City of St. Louis, the Circuit Clerk of St. Louis County, and the Court Administrator of Jackson County, come within the provisions of the State Legal Expense Fund. This conclusion was based on Section 483.083.7, RSMo Supp. 1984, which expressly stated "[t]he compensation of all circuit clerks shall be paid by the state and they shall be considered state employees. . . ." Section 211.393, RSMo Supp. 1989, does not expressly provide that deputy juvenile officers or other juvenile court personnel are state employees.

In Cates v. Webster, 727 S.W.2d 901 (Mo. banc 1987), a case involving eligibility to a circuit court bailiff for coverage under the State Legal Expense Fund, the Missouri Supreme Court recognized:

> the Attorney General's office has represented those persons holding positions within the circuit court level of the judicial system whose salaries and fringe

> benefits are provided from state funds. These have included circuit judges, circuit clerks, deputy circuit clerks, court reporters for circuit courts, and juvenile officers. On the other hand the Attorney General has refused to represent those not compensated from state funds, such as deputy juvenile officers. . . . [Emphasis added.]

Id. 727 S.W.2d at 903.

The court concluded that Missouri statutes, using Section 483.083 concerning compensation of circuit clerks as an example, "exhibit a legislative intent, in apportioning duties and liabilities between the state and counties, to consider as state employees those judicial personnel paid by the state and to consider as nonstate employees those judicial personnel paid by the county." Id., 727 S.W.2d at 905-906. Therefore, although the circuit court bailiff was controlled exclusively by the circuit court, the Missouri Supreme Court concluded he was a county, rather than state, employee since his position was wholly funded by the county. Id. at 907.

We conclude that a deputy juvenile officer and juvenile detention facility personnel are not covered by the State Legal Expense Fund despite the funding provided for in Section 211.393. Section 211.393.6, defines the term "'salaries of all juvenile court personnel excluding fringe benefits' for which the state will reimburse the counties" as "the salary provided in subsections 1, 2, and 3 of section 211.381 for a chief deputy juvenile officer and one deputy juvenile officer, class 1, and all other full-time juvenile court personnel included in the initial county budget for calendar year 1988, but excluding all fringe benefits for such personnel." [Emphasis added.]

As we stated in Attorney General Opinion No. 25-90, a copy of which is enclosed:

> Although Section 211.393 provides state reimbursement toward salaries of other juvenile court personnel, such section specifically excludes all fringe benefits for such personnel. We conclude that the legislature intended that the State's contribution be limited to salary of juvenile court personnel other than the juvenile officer. Therefore, other

> juvenile court personnel are not state employees. . . .

Attorney General Opinion No. 25-90, page 12.

In summary, there is no statutory provision stating that the employees about which you inquire are state employees. Section 211.393 specifically excludes all fringe benefits for such employees. As a result, the employees referred to in your questions are not under the State Legal Expense Fund.

CONCLUSION

It is the opinion of this office that deputy juvenile officers and juvenile detention facility personnel are not covered by the State Legal Expense Fund, Section 105.711, RSMo.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 34-85
Opinion No. 25-90

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

April 18, 1990

OPINION LETTER NO. 40-90

The Honorable John Kauffman
Representative, District 12
State Capitol Building, Room 116-4
Jefferson City, Missouri 65101

Dear Representative Kauffman:

This opinion letter is in response to your question relating to the salary for the deputy of the Linn County treasurer ex officio collector for 1988 and 1989. You specifically inquire if the county commission is required to pay the deputy treasurer ex officio collector ninety percent of the salary of the treasurer ex officio collector.

You have informed us that Linn County is a third class county adopting a township organization with a population of 15,495 and a current assessed valuation of $68,269,752. The information accompanying your opinion request states that the Linn County treasurer ex officio collector requested ninety percent of his salary in his 1988 budget for the salary of the deputy.

Section 54.320.1, RSMo Supp. 1987, effective January 1, 1988, provided in pertinent part:

> 54.320. Treasurer, ex officio collector, compensation--commissions--deputies and assistants, compensation--fees (township counties).--1. The county treasurer ex officio collector in counties of the third and fourth classes adopting township organizations shall receive an annual salary computed on an assessed valuation basis as set forth in the following schedule. Except as provided in section 50.333, RSMo, the amount provided by this section shall be the total compensation for all services performed by such treasurer ex officio collector. The assessed valuation factor shall be the amount

thereof as shown for the year next preceding the computation. The provisions of this section shall not permit or require a reduction in the amount of compensation received by any person holding the office of treasurer ex officio collector on January 1, 1988.

Population	Salary
* * *	
15,001 to 17,500	$ 8,750
* * *	
Assessed Valuation	Salary
* * *	
60,000,001 to 70,000,000	$17,000
* * *	

. . . The treasurer and ex officio collector in each of the third and fourth class counties which have adopted the township form of county government is entitled to employ deputies and assistants and for the deputies and assistants, is allowed not less than the following sums to be paid out of the county treasury in equal monthly installments:

* * *

(5) In counties having a population of fifteen thousand but less than eighteen thousand, the sum of ninety percent of the salary of the treasurer and ex officio collector; [Emphasis added.]

* * *

Section 50.333.9, RSMo Supp. 1987, provided in pertinent part:

50.333. Salary commission, duties of clerk, notice of meetings, members, duties, meetings, report (noncharter counties).--

* * *

> 9. The provisions of this section shall not require or permit a reduction in the amount of compensation received by any person holding office as of September 28, 1987.

The information accompanying your opinion request indicates that the proper salary of the treasurer ex officio collector in 1988 was higher than provided in the statutory chart because of the proviso that a person holding office as of September 28, 1987 shall not be required or permitted a reduction in compensation.

The above statutory provisions were amended in 1988. See Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 431, 84th General Assembly, Second Regular Session (1988), effective May 13, 1988. Section 54.320.1, RSMo Supp. 1989, provides in pertinent part:

> 54.320. Treasurer, ex officio collector, compensation--commissions--deputies and assistants, compensation--training program, attendance required, expenses, compensation (township counties).--1. The county treasurer ex officio collector in counties of the third and fourth classes adopting township organizations shall receive an annual salary as set forth in the following schedule. . . . A county treasurer ex officio collector subject to the provisions of this section shall not, except upon two-thirds vote of all the members of the salary commission, receive an annual compensation less than the total compensation being received by the county treasurer ex officio collector in that county for services rendered or performed for the period beginning March 1, 1987, and ending February 29, 1988, unless such total compensation paid exceeds the maximum compensation allowable for the office of county treasurer ex officio collector in such county under the provisions of this section. . . . The treasurer and ex officio collector in each of the third and fourth class counties which have adopted the township form of county government is entitled to employ deputies and assistants and for the deputies and assistants, until December 31, 1994, is allowed not less than the amount allowed in 1988. Beginning January 1, 1995, deputies and assistants shall receive compensation in the amount set by the governing body of the county. [Emphasis added.]

* * *

Section 54.230, RSMo 1986, provides in pertinent part:

> 54.230. Deputies and assistants compensation (second, third, township organization and certain first class counties).--The county treasurer of . . . a county of the second or third class, and of a county which has adopted the township alternative form of government shall be entitled to have and to appoint such a number of deputies and assistants as the county treasurer, with the approval of the county commission, deems necessary for the prompt and proper discharge of his office, and the treasurer's deputies and assistants shall be paid such salaries as are fixed by the county treasurer with the approval of the county commission. The salaries of all such deputies and assistants shall be paid by the county in the same manner as the salary of the county treasurer is paid. [Emphasis added.]

Section 54.230 was amended in 1986 to make the provisions of that section applicable to a third class county having adopted a township form of organization and has not been amended subsequent.

In Missouri Attorney General Opinion No. 124, Davis, 1967, a copy of which is enclosed, this office considered Section 54.230, RSMo 1959. The opinion discusses whether the function of the county court (now county commission) under such section is ministerial or discretionary. The opinion described the issue as determining in which of the following ways Section 54.230, RSMo 1959 should be interpreted:

> 1. That the county treasurer has an unqualified right to appoint deputies and assistants and the county court's approval is simply ministerial.
>
> 2. That the county treasurer's right to appoint deputies and assistants is a qualified right which requires the approval of the county court in the exercise of its discretion.

The opinion concluded approval by the county court (now county commission) is discretionary and stated:

> It is therefore the opinion of this office that a county treasurer of a second class county must submit his deputy and assistant appointments to the county court pursuant to Section 54.230, RSMo 1959. Such appointment is not valid until approved by the county court and that approval is within the sound discretion of the county court.

Statutes relating to the same subject are to be considered together and harmonized if possible so as to give meaning to all provisions of each. State ex rel. Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985). When the legislature amended Section 54.230 in 1986 so that such section applies to a third class county having adopted a township form of government, it was apparently the intent of the legislature that the county commission approve the number and salary of the deputies and assistants in the office of the county treasurer ex officio collector.

Section 54.320 does not say the deputies and assistants shall be paid a specific amount; rather, it says the treasurer ex officio collector is entitled to employ deputies and assistants and for the deputies and assistants, is allowed not less than . . . . In considering the two statutes together, we conclude the county commission is not required to pay the deputy treasurer ex officio collector ninety percent of the salary of the treasurer ex officio collector. Section 54.230 provides discretion to the county commission, and Section 54.320 does not mandate payment of such amount to the deputy.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure:
Opinion No. 124, Davis, 1967

AUTOMOBILE DEALER:
BONDS:
MOTOR VEHICLES:
SURETY BOND:

(1) Motor vehicle dealer bonds required by Section 301.560, RSMo Supp. 1989, do not provide coverage for activities occurring outside the State of Missouri; and (2) "any aggrieved party" as used in Section 301.560, RSMo Supp. 1989, includes licensed motor vehicle dealers and automobile auctions as well as purchasers.

August 27, 1990

OPINION NO. 41-90

The Honorable Christopher Graham
Representative, District 112
Post Office Box 746
Jefferson City, Missouri 65102

Dear Representative Graham:

This opinion is in response to your questions asking:

> Do the motor vehicle dealer bonds required by Section 301.560, RSMo protect any aggrieved party suffering loss by the acts of the person bonded, when the grounds for the suspension or revocation of the license of the bonded person resulted from his activities occurring outside of Missouri?
>
> Does "any aggrieved party" as cited in the statute include licensed motor vehicle dealers and/or automobile auctions?

Senate Committee Substitute for House Committee Substitute for House Bill No. 1512, Eighty-fourth General Assembly, Second Regular Session (1988), created the "Missouri Motor Vehicle Commission" within the Department of Economic Development. The Commission is responsible for licensing all manufacturers, motor vehicle dealers and boat dealers as required by House Bill No. 1512.

Section 301.560, RSMo Supp. 1989, initially enacted by House Bill No. 1512 and amended in 1989, requires:

> 301.560. Application requirements, additional--bonds, fees, signs required--license number, certificate of numbers--duplicate dealer plates, issues, fees--test driving motor vehicles, use of

> plates.--1. In addition to the application forms prescribed by the commission, each applicant shall submit the following to the commission:
>
> * * *
>
> (4) Every applicant as a new motor vehicle franchise dealer, a used motor vehicle dealer, a wholesale motor vehicle dealer, or boat dealer shall furnish with the application a corporate surety bond or an irrevocable letter of credit as defined in section 400.5-103, RSMo, issued by any state or federal financial institution in the penal sum of twenty-five thousand dollars on a form approved by the commission. The bond or irrevocable letter of credit shall be conditioned upon his complying with the provisions of the statutes applicable to new motor vehicle franchise dealers, used motor vehicle dealers, wholesale motor vehicle dealers and boat dealers, and the bond shall be an indemnity for any loss sustained by any person by reason of the acts of the person bonded when such acts constitute grounds for the suspension or revocation of his license. The bond shall be executed in the name of the state of Missouri for the benefit of any aggrieved party or the irrevocable letter of credit shall name the state of Missouri as the beneficiary; except, that the aggregate liability of the surety or financial institution to the aggrieved party shall, in no event, exceed the amount of the bond or irrevocable letter of credit. The proceeds of the bond or irrevocable letter of credit shall be paid upon receipt by the commission of a final judgment from a Missouri court of competent jurisdiction against the principal and in favor of an aggrieved party;
>
> * * *

The scope of the obligation under a statutory bond is prescribed by the statute in compliance with which the bond is given. Home Indemnity Co. v. State of Missouri, 78 F.2d 391 (8th Cir. 1935). Since no Missouri appellate court has yet interpreted Section 301.560, our interpretation is guided by the

language of the statute itself and the rulings of courts of other jurisdictions on similar issues.

As to your first question concerning whether Missouri's motor vehicle surety bonds have an extraterritorial effect, the few courts that have addressed similar issues are divided.

> Some courts hold that when a state's licensing statute conditions the issuance of a license upon the execution of a surety bond, a presumption exists that the bond's application does not extend outside the issuing state. Thus, for such a bond to have extra-territorial effect, the statute must explicitly so provide. See, e.g., State Surety Company v. Lensing, 249 N.W.2d 608 (Iowa 1977); Peerless Ins. v. Clark, 29 Colo. App. 436, 487 P.2d 574 (1971); Ore-Ida Potato Products, Inc. v. United Pacific Ins. Co., 87 Idaho 185, 392 P.2d 191 (1964). Other courts hold that, absent language in the statute or bond that explicitly limits the bond's application to intrastate transactions, the bond will be given extra-territorial effect. See, e.g., South Seattle Auto Auction, Inc. v. Western Casualty and Surety Co., 41 Or. App. 707, 598 P.2d 1269 (1979); United States Fidelity & Guaranty Co. v. Colonial Baking Co., 220 Ark. 287, 247 S.W.2d 997 (1952).

Mawyer v. Lumbermens Mutual Casualty Company, 237 Va. 299, 377 S.E.2d 401, 402-403 (1989).

In Peerless Insurance Company v. Clark, 29 Colo. App. 436, 487 P.2d 574 (1971), the court examined Colorado's statute requiring motor vehicle dealers to file a bond, C.R.S. 1963, 13-11-11(1). This statute provides protection for "any person" who suffers loss or damage by reason of fraudulent representations made by a licensed dealer. It was argued that the words "any person" gave the statute an extraterritorial effect. However, the court held:

> the law appears to be well settled that a statute cannot be presumed to have any extraterritorial effect. In Swift & Co. v. Peterson, 192 Or. 97, 233 P.2d 216, it is stated,
>
> "No legislation is presumed to be intended to operate outside of the

> jurisdiction of the state enacting it. In fact, a contrary presumption prevails and statutes are generally so construed. 50 Am. Jur., Statutes, 510 § 487; Sandberg v. McDonald, 248 U.S. 185, 39 S.Ct. 84, 195, 63 L.Ed. 200."

Id., 487 P.2d at 575.

In State Surety Company v. Lensing, 249 N.W.2d 608 (Iowa 1977), the court construed Section 322.4(7) Iowa Code 1971, requiring motor vehicle dealers to furnish a surety bond indemnifying "any person" suffering a loss caused by the dealer's failure to comply with the terms of the Iowa statutes. Following the reasoning of Peerless, supra, the court concluded "the mere use of the words 'any fraud' and 'any person' are insufficient to overcome the presumption" that a statute does not have an extraterritorial effect. Id., 249 N.W.2d at 611.

However, in South Seattle Auto Auction Inc. v. Western Casualty and Surety Co., 41 Or. App. 707, 598 P.2d 1269 (1979), the court examined O.R.S. Section 481.310 providing coverage under a motor vehicle dealer bond for "any person" suffering loss or damage "by reason of the fraud, fraudulent representations or violation" of provisions of the statute. The Oregon court of appeals held the statute did have an extraterritorial effect because Section "481.310 neither prescribes territorial limits for the availability of the bond nor does it require that the bond be universal." Id., 598 P.2d at 1272.

Similarly, in Mawyer v. Lumbermens Mutual Casualty Company, supra, following the South Seattle decision, the Virginia Supreme Court held a North Carolina motor vehicle dealer bond covered a Virginia purchaser. The court stated: "no language in either the North Carolina Statute or Lumbermens' bond explicitly limits the bond's application to North Carolina's borders." Id., 377 S.E.2d at 403. The court concluded that N.C.Gen.Stat. Section 20-288(e) and the bond "should be construed broadly in favor of protecting the consumer and strictly against the fraudulent dealer and his surety." Id.

The decisions of Virginia and Oregon fail to address the general rule as stated in 73 Am Jur 2d, Statutes, Section 359, Page 492:

> Unless the intention to have a statute operate beyond the limits of the state or country is clearly expressed or indicated by its language, purpose, subject matter, or history, no legislation is presumed to

> be intended to operate outside the territorial jurisdiction of the state or country enacting it.

Therefore, we conclude, for the reasons articulated by the courts of Iowa and Colorado, that the motor vehicle dealer bonds required by Section 301.560, RSMo Supp. 1989, do not provide coverage for activities occurring outside of Missouri.

Your second question concerns the parties covered by the motor vehicle dealer bond. In the statement of facts accompanying your question, you express concern about a decision from the Iowa Supreme Court holding that only "purchasers" are protected. Boone State Bank and Trust Co. v. Westfield Insurance Co., 298 N.W.2d 315 (Iowa 1980). In that decision, the court concluded that Section 322.4(7) Iowa Code 1973, which required motor vehicle dealers to have a bond "indemnifying any person dealing or transacting business with said dealer" limited coverage to purchasers of motor vehicles. Id., 298 N.W.2d at 318. However, the Iowa court's decision was largely based on a 1980 amendment to the statute clarifying legislative intent by substituting "any person who buys a motor vehicle from the dealer" for the previous reference to "any person dealing or transacting business with said dealer."

Legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Section 301.560, RSMo Supp. 1989, states that the motor vehicle dealer's bond is to be "for the benefit of any aggrieved party" (Emphasis added.). Therefore, any party aggrieved as a result of dealings with a licensed motor vehicle dealer, including licensed motor vehicle dealers and automobile auctions as well as purchasers, would be protected by the bond.

CONCLUSION

It is the opinion of this office that (1) motor vehicle dealer bonds required by Section 301.560, RSMo Supp. 1989, do not provide coverage for activities occurring outside the State of Missouri; and (2) "any aggrieved party" as used in Section 301.560, RSMo Supp. 1989, includes licensed motor vehicle dealers and automobile auctions as well as purchasers.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

BOARD OF TRUSTEES:
FIRE PROTECTION DISTRICT:
INCOMPATIBILITY OF OFFICES:
VILLAGES:

The same person may not simultaneously serve as a director of a fire protection district and as trustee of a village located within that fire protection district; however, an incumbent director of a fire protection district can be a candidate for the office of trustee of a village located within that fire protection district.

September 12, 1990

OPINION NO. 42-90

The Honorable M. Douglas Harpool
Representative, District 134
P.O. Box 10306 G.S.
Springfield, Missouri 65808

Dear Representative Harpool:

This opinion is in response to your questions asking:

> If appropriately qualified, may a citizen seek election as a member of the Board of Trustees of the Village of Battlefield while a member of the Board of Directors of the Battlefield Fire Protection District?
>
> If elected, may a citizen simultaneously serve as both a Trustee of the Village and Director of the Battlefield Fire Protection District?

We note that the Village of Battlefield is located within the boundaries of the Battlefield Fire Protection District, and that both are located in Greene County.

There is no statutory or constitutional provision prohibiting a person from holding both offices.[1] There is, however, a body of common law regarding conflicts of interest in holding public office. The doctrine at common law which

prohibits a public official from holding two incompatible offices is based on the following principles:

> At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two, -- some conflict in the duties required of the officers, as where one has some supervision of the others, is required to deal with, control, or assist him. It was said by Judge Folger (People v. Green, 58 N.Y. 295): "Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that 'incompatibility' from which the law declares that the acceptance of the one is the vacation of the other. The force of the word in its application to this matter is that, from the nature and relations to each other of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one towards the incumbent of the other. . . .

State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636, 639 (1896).

Applying these principles, this office has previously opined that a person may not simultaneously hold both the office of presiding commissioner of a third class county and the office of alderman of a fourth class city within that county. See Opinion No. 121-88, a copy of which is enclosed. In that opinion, it was observed that statutes might bring the two offices into conflicts of authority.

Section 80.090, RSMo 1986, sets forth powers given to the board of trustees of a village. These include power:

> (11) To organize and maintain fire companies;

> (12) To prevent and extinguish fires;
>
> (13) To establish fire limits and to define the limits within which wooden buildings, stables, manufactories and other structures which may increase the danger of calamities from fires shall not be erected;

Section 321.220, RSMo, sets forth powers of the board of directors of a fire protection district. These include power:

> (12) To adopt and amend bylaws, fire protection and fire prevention ordinances, and any other rules and regulations not in conflict with the constitution and laws of this state, necessary for the carrying on of the business, objects and affairs of the board and of the district. . . .

It is possible that conflict would arise in carrying out the responsibilities of both offices. In light of these areas of potential conflict between the offices, we conclude that there is an incompatibility between the office of trustee of a village and director of a fire protection district in which such village is located. As a result of such incompatibility and conflict, the same person may not hold these offices simultaneously. There is no authority that holds an election creates an exception to the doctrine of incompatibility.

Having concluded a person may not hold both offices simultaneously, we turn to your remaining question asking whether a person may be a candidate for the office of trustee of a village while a member of the board of directors of a fire protection district which includes the village. There are no constitutional or statutory provisions prohibiting a member of the board of directors of a fire protection district from being a candidate for the office of trustee of a village located within the district. However, should he be successful in his candidacy, the general rule is that "[t]he acceptance of an incompatible office by the incumbent of another office is generally regarded as a resignation or vacation of the first office. . . ." 67 C.J.S. Officers, § 32a.

CONCLUSION

It is the opinion of this office that the same person may not simultaneously serve as a director of a fire protection district and as trustee of a village located within that fire protection district; however, an incumbent director of a fire

protection district can be a candidate for the office of trustee of a village located within that fire protection district.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 121-88

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[1]Section 321.015, RSMo 1986 was amended in 1990 by House Bill No. 1149, 85th General Assembly, Second Regular Session (1990) to provide that such section "shall not apply . . . to fire protection districts . . . located within first class counties without a charter form of government having a population of more than one hundred ninety-eight thousand and not adjoining any other first class county." Because of this 1990 amendment to Section 321.015 eliminating Greene County from its provisions, we need not consider this statutory section.

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

October 9, 1990

OPINION LETTER NO. 44-90

The Honorable Jacqueline T. McGee
Representative, District 38
State Capitol Building, Room 116A-1
Jefferson City, Missouri 65101

Dear Representative McGee:

This opinion letter is in response to your question asking:

> Whether or not there is a conflict of interest or a prohibition against a member of the Missouri General Assembly providing legal representation to indigent parties pursuant to appointment by the Circuit Court and when receiving compensation therefor from the Circuit Court or when receiving compensation which has been taxed as costs in the proceeding.

Article III, Section 12, of the Missouri Constitution provides:

> Section 12. Members of general assembly disqualified from holding other offices. No person holding any lucrative office or employment under the United States, this state or any municipality thereof shall hold the office of senator or representative. When any senator or representative accepts any office or employment under the United States, this state or any municipality thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary as senator or representative. During the term for which he was elected no senator or representative shall accept any appointive office or

> employment under this state which is created or the emoluments of which are increased during such term. This section shall not apply to members of the organized militia, of the reserve corps and of school boards, and notaries public.

There is no question that a member of the General Assembly may not hold any employment for which is received compensation with the United States, this state, or any municipality of this state. See Opinion No. 92, Vogel, February 14, 1951, and Opinion No. 412, Grellner, 1966. A copy of each is enclosed.

We assume your question relates to an appointment to represent an indigent criminal defendant. In our view, your question is answered by Opinion No. 34, Bradshaw, 1973, a copy of which is enclosed, in which we held that a member of the General Assembly who accepts an appointment and receives compensation as an attorney to represent indigent defendants violates the provisions of Article III, Section 12, of the Missouri Constitution. A copy of Opinion Letter No. 355, Salveter, 1969, which is self-explanatory is also enclosed.

It is the opinion of this office that a member of the General Assembly accepting a court appointment as described in your question to represent an indigent criminal defendant for compensation would come within the prohibition of Article III, Section 12, of the Missouri Constitution.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 92, Vogel, February 14, 1951
Opinion No. 412, Grellner, 1966
Opinion No. 34, Bradshaw, 1973
Opinion Letter No. 355, Salveter, 1969

COOPERATIVE AGREEMENTS: Political subdivisions within the State of Missouri may enter into mutual aid or cooperative agreements relating to police services with political subdivisions of another state; however, there is no authority for the Missouri political subdivision to confer police authority upon members of the law enforcement agency of the political subdivision located outside the State of Missouri except by commissioning those members.
POLICE:

May 15, 1990

OPINION NO. 46-90

Branson L. Wood III
Marion County Prosecuting Attorney
Post Office Box 1014
Hannibal, Missouri 63401

Dear Mr. Wood:

This opinion is in response to your question asking:

> Can Marion County, Missouri, through its governing body of commissioners, enter into a mutual aid agreement to contract and cooperate with the City of Quincy, Illinois, through the Quincy City Council for the Marion County Sheriff's Department and Quincy Police Department to mutually respond to non-emergency situations with the same powers of arrest as the officers of the requesting political subdivision within the territorial limits of Marion County, Missouri, and within the city limits of Quincy, Illinois, under Article 6 Missouri Constitution, Section 16 and Section 70.220 RSMo 1986 or does Section 70.815 RSMo 1986 prohibit such interstate mutual aid agreement for law enforcement services by specifically defining political subdivision as an agency or unit of <u>this</u> state?

The resolution of this question depends upon the interpretation of two statutes dealing with the cooperation of one political subdivision with other political subdivisions.

Branson L. Wood III

Section 70.815, RSMo Supp. 1989, provides:

> 70.815. Political subdivisions and boards of police commissioners of St. Louis and Kansas City may contract to provide police services for other political subdivisions--powers of arrest and immunity--definitions.--1. As used in this section:
>
> (1) "Governing body" means the board, body, council, or persons in which the powers of a political subdivision as a body corporate, or otherwise, are vested;
>
> (2) "Political subdivision" means any agency or unit of this state empowered by law to maintain a law enforcement agency.
>
> 2. The governing body of any political subdivision may by ordinance, order or other ruling enter into a contract or agreement with any other political subdivision, with the board of police established by section 84.020, RSMo, or with the board of police commissioners established by section 84.350, RSMo, for the provision of police services by one political subdivision to another on request. The scope of the agreement may be general or specific, and may or may not provide for compensation for such services. Officers providing police services in another jurisdiction pursuant to such an agreement shall have the same powers of arrest as officers of the requesting political subdivision, and shall have the same immunity as if acting within their own jurisdiction. [Emphasis added.]

By its clear language, this statute limits these types of agreements to law enforcement agencies within the State of Missouri.

Article VI, Section 16 of the Missouri Constitution provides:

> Section 16. Cooperation by local governments with other governmental units. Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law.

Section 70.220, RSMo 1986, provides:

> 70.220. Political subdivisions may cooperate with each other, with other states, the United States or private person.-- Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides.

Branson L. Wood III

Article VI, Section 16 of the Missouri Constitution confers broad authority on political subdivisions to contract with the political subdivisions of other states for a wide range of services. Likewise, Section 70.220 provides broad authority for political subdivisions to enter into agreements with other political subdivisions, in or out of Missouri. In Missouri Attorney General Opinion No. 213, Cantrell, 1963, a copy of which is enclosed, this office concluded that Article VI, Section 16 includes the authority to contract for police services.

Ascertainment of legislative intent is the primary goal of statutory construction. O'Flaherty v. State Tax Commission of Missouri, 680 S.W.2d 153, 155 (Mo. banc, 1984). Statutes relating to the same subject are to be considered together and harmonized if possible so as to give meaning to all provisions of each. State ex rel. Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985). With these principles in mind it is our task to read Sections 70.220 and 70.815 together and to harmonize them if possible. In this case, harmonizing those two statutes is not difficult because no conflict appears between the language in the statutes.

Section 70.815 is not a limitation on the broad power in Section 70.220 but clearly was intended as one means of facilitating agreements between political subdivisions for police services. Under Missouri law, a police officer in a particular jurisdiction has no inherent authority to go into another jurisdiction to enforce the criminal laws of this state. City of Fredericktown v. Bell, 761 S.W.2d 715 (Mo. App. 1988). Section 70.815 is simply one means of dealing with that limitation by allowing one political subdivision to confer police authority to members of the law enforcement agency of another Missouri political subdivision. Nothing in that statute suggests that it is the exclusive means of entering into cooperative agreements with other entities or that it is the only means of conferring police authority on members of another law enforcement agency. In fact, the courts of Missouri do recognize other means of conferring law enforcement authority other than that provided in Section 70.815. State v. Helm, 773 S.W.2d 139 (Mo. App. 1989). Interpreting Section 70.220 to allow cooperative agreements for police services in addition to those provided in Section 70.815 harmonizes both statutes and gives effect to the express language in both statutes.

However, it is important to note that Missouri political subdivisions have no inherent authority to allow out of state police officers to exercise police authority within the State of Missouri, or even within their own geographic boundaries. In

other words, Marion County cannot simply grant "permission" to members of the Quincy, Illinois, police department to come into Missouri and exercise police authority. Section 70.815 recognizes this lack of inherent authority and was enacted specifically to grant Missouri political subdivisions that authority but only to members of the law enforcement agency of other Missouri political subdivisions. The only authority for out of state police officers to enter the State of Missouri and exercise police authority as an out of state officer is when the officer enters Missouri in the "fresh pursuit" of a felon. Section 544.155, RSMo 1986. Should Marion County or some other political subdivision of Missouri enter into a mutual aid or cooperative agreement with a political subdivision located outside the State of Missouri, the conferring of police authority upon members of the law enforcement agency of the out of state political subdivision would have to be in the same manner that the Missouri political subdivision confers authority upon its own officers, by commissioning those members. State v. Helm, supra.

CONCLUSION

It is the opinion of this office that political subdivisions within the State of Missouri may enter into mutual aid or cooperative agreements relating to police services with political subdivisions of another state; however, there is no authority for the Missouri political subdivision to confer police authority upon members of the law enforcement agency of the political subdivision located outside the State of Missouri except by commissioning those members.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure:
Attorney General Opinion No. 213, Cantrell, 1963

DEATH CERTIFICATES:
DEPARTMENT OF HEALTH:
ECONOMIC DEVELOPMENT, DEPT. OF:
FUNERAL DIRECTORS:
VITAL STATISTICS:

If the cause of death can be determined within seventy-two (72) hours after death, Section 193.175, RSMo 1986, requires a completed death certificate to be filed with the local registrar before a body is cremated in the State of Missouri.

November 19, 1990

OPINION NO. 47-90

Carl M. Koupal, Jr., Director
Department of Economic Development
P.O. Box 1157
Jefferson City, MO 65102-1157

Dear Mr. Koupal:

This opinion is in response to your question asking:

> The last sentence of Section 193.175 RSMo states "If the body is to be cremated, a completed death certificate shall be filed with the local registrar prior to cremation and shall authorize cremation except as stated in section 193.145 of this act."
>
> Would it violate Section 193.175 for a body to be cremated in the state of Missouri before a completed death certificate is filed with the local registrar if the cause of death can be determined within seventy-two (72) hours after death?

Section 193.175, RSMo 1986, provides:

> 193.175. Person in charge of final disposition of dead body to file notification of death--cremation, requirements.--The funeral director or person acting as such in charge of final disposition of a dead body shall file a completed notification of death with the local registrar where the death occurred.

> Such notification of death shall be on a form or in a format prescribed and furnished by the state registrar and shall be filed or postmarked prior to the date of final disposition of the body. Such notification of death shall authorize final disposition except as otherwise stated in this section or in section 193.145. If the body is to be cremated, a completed death certificate shall be filed with the local registrar prior to cremation and shall authorize cremation except as stated in section 193.145.

Whether Section 193.175 would allow a body to be cremated before a death certificate is filed is a question of statutory construction. In Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc. 1988), it was stated: "The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning." Therefore, one must turn to the words and language used in Section 193.175 to determine the intent of the legislature. The statute states in pertinent part: "If the body is to be cremated, a completed death certificate shall be filed with the local registrar prior to cremation and shall authorize cremation except as stated in section 193.145."

One must look to Section 193.145, RSMo Supp. 1989, to determine if the legislature intended the facts as presented in your opinion request to be an exception to Section 193.175. Section 193.145.8 states:

> 8. If the cause of death cannot be determined within seventy-two hours after death, the medical examiner or coroner or attending physician or local registrar shall give the funeral director, or person acting as such, notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the medical examiner or coroner or attending physician or local registrar. (Emphasis added.)

As can be seen by the plain language of Section 193.145.8, this exception only applies to cases in which the cause of death cannot be determined within seventy-two (72) hours after

death. Because your question indicates that the cause of death can be determined within seventy-two (72) hours, it would fall outside the parameters of the exception in Section 193.145. The wording of Section 193.145.8 is clear and unambiguous and therefore no construction is necessary. In State ex rel. Degeere v. Appelquist, 748 S.W.2d 855, 857 (Mo.App. 1988), the court stated, "Where the language of a statute is clear and unambiguous, there is no room for construction." Therefore, if the cause of death can be determined within seventy-two (72) hours after death, Section 193.175 requires a completed death certificate to be filed with the local registrar before a body is cremated in the State of Missouri.

CONCLUSION

It is the opinion of this office that if the cause of death can be determined within seventy-two (72) hours after death, Section 193.175, RSMo 1986, requires a completed death certificate to be filed with the local registrar before a body is cremated in the State of Missouri.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

FILING:
RECORDER OF DEEDS:
RECORDING:
UNIFORM COMMERCIAL CODE:

The user fee specified in Section 59.319, RSMo Supp. 1989, should not be collected when a UCC-1 is merely filed, but such user fee should be collected when a UCC-1 is filed for record or recorded.

February 7, 1990

OPINION NO. 50-90

W. James Icenogle
Camden County Prosecuting Attorney
Camden County Courthouse
Camdenton, Missouri 65020

Dear Mr. Icenogle:

This opinion is in response to your question asking:

> Does the phrase "any instrument," as used in Section 59.319, RSMo, include filings made under the Uniform Commercial Code, such that the four dollar user fee must be collected for each UCC-1 filing?

Section 59.319, prior to amendment in 1989, provided in part:

> A user fee of three dollars shall be charged and collected by every recorder in the state, over and above any other fees required by law, as a condition precedent to the recording of any instrument conveying real property or any interest therein. [Emphasis added.]

Section 59.319 was revised in 1989 by Conference Committee Substitute for Senate Committee Substitute for House Bill No. 786, 85th General Assembly, First Regular Session, so that Section 59.319, RSMo Supp. 1989, now provides in part:

> A user fee of four dollars shall be charged and collected by every recorder in this state, over and above any other fees required by law, as a condition precedent

> to the recording of any instrument. [Emphasis added.]

The new legislation increased the user fee from three dollars to four dollars and dropped the requirement the instrument subject to the charge, "convey[ing] real property or any interest therein."

In answering the question posed, there are two issues to be considered. First, does the phrase "any instrument" as now used in Section 59.319 include filings made under the Uniform Commercial Code, such as a UCC-1 filing? Second, does a "filing" made under the Uniform Commercial Code, such as a UCC-1 filing, constitute a "recording" as used in Section 59.319.

The primary purpose of statutory construction is to ascertain the intent of the legislature. State ex rel. Missouri State Board of Registration for Healing Arts v. Southworth, 704 S.W.2d 219, 224 (Mo. banc 1986); Collins v. Director of Revenue, 691 S.W.2d 246, 251 (Mo. banc 1985). Words used in a statute are to be considered in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988); Thomas v. Frazier, 626 S.W.2d 682, 684 (Mo. App. 1981). The word "instrument" is not defined in Section 59.319; thus, one is to consider the word "instrument" in its plain and ordinary meaning. An instrument is "[a] written document; a formal or legal document in writing, such as a contract, deed, will, bond or lease." Black's Law Dictionary 719 (5th Ed. 1979). There are many "instruments" which do not "convey[ing] real property or any interest therein," among which are UCC-1 documents. Thus, by deleting the requirement the instrument must "convey[ing] real property or any interest therein," the legislature has expanded the number of documents to which the user fee may apply. With respect to the first issue to be considered, we conclude that the phrase "any instrument" does include a UCC-1.

Turning to the second issue, Section 59.319 requires the fee to be assessed for "the recording of any instrument." [Emphasis added.] The legislature has shown it does not consider filings and recordings synonymous. Section 59.330, RSMo Supp. 1989, in setting forth the duties of the recorder, provides in part:

> 59.330. What shall be recorded.--It shall be the duty of recorders to record:

> (1) All deeds, mortgages, conveyances, deeds of trust, assignments, bonds, covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved or acknowledged according to law, . . . [Emphasis added.]

On the other hand the legislature, in Section 400.9-403, RSMo Supp. 1989, refers not to Uniform Commercial Code recordings, but filings. Therefore, if a UCC-1 is merely filed, the user fee specified in Section 59.319 should not be collected.

That is not to say a UCC-1 instrument cannot be "recorded" for the purposes of assessing the user fee set forth in Section 59.319. Section 400.9-401(1)(b), RSMo Supp. 1989, in establishing the "proper place to file" reads:

> 400.9-401, Place of filing--erroneous filing--change of location of debtor or collateral--collateral of transmitting utility.--
>
> * * *
>
> (b) [W]hen the collateral is timber to be cut, minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 400.9-103, or when the financing statement is filed as a fixture filing (section 400.9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed for record, and any such filing shall be for record; [Emphasis added.]
>
> * * *

Further Section 400.9-408, RSMo Supp. 1989, reads:

> 400.9-408. Additional filing requirements--when applicable--liability of recorder of deeds.--Notwithstanding any other provisions of this chapter, the following special provisions apply where a financing statement is required to be

> filed for record in the office where a mortgage on the real estate concerned would be filed for record.
>
> (1) Any amendment, continuation statement, termination statement, statement of assignment, or statement of release incidental to such a financing statement shall be filed for record in the same office where the original financing statement is recorded.
>
> (2) In addition to other requirements of this part of this chapter, every such statement incidental to such a financing statement shall refer to the original financing statement by book and page of the record thereof.
>
> (3) Such financing statements and such other statements incidental thereto shall be recorded in the real estate mortgage records, and shall be indexed as real estate mortgages. If any statement shows the name of a record owner of the real estate which is other than the name of the debtor or the secured party, the statement also shall be indexed in the mortgagor index according to the name of such record owner. Such financing statements and such other statements incidental thereto are entitled to be recorded even though not proved or acknowledged and certified. Fees for recording and related services shall be the same as the fees authorized by law in the case of real estate mortgages. [Emphasis added.]
>
> * * *

Therefore, under certain circumstances, a UCC-1 instrument is "filed for record" ("recorded") and such a recording should be assessed the user fee specified in Section 59.319.

CONCLUSION

It is the opinion of this office that the user fee specified in Section 59.319, RSMo Supp. 1989, should not be collected when a UCC-1 is merely filed, but such user fee should be collected when a UCC-1 is filed for record or recorded.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

AUDITS:
COUNTIES:
COUNTY AUDITOR:

A county auditor of a first class non-charter county is not authorized to conduct an audit of a corporation organized under Chapter 355, RSMo, even if the corporation performs a public function on behalf of the county and has as a primary purpose to enter into contracts with the county and engage in activities carried out pursuant to an agreement with the county.

April 12, 1990

OPINION NO. 51-90

The Honorable Jeremiah W. (Jay) Nixon
Senator, District 22
State Capitol Building, Room 429
Jefferson City, Missouri 65101

Dear Senator Nixon:

This opinion is in response to your question asking:

> Does a county auditor have the authority to conduct audits of a corporation organized to do business under Chapter 355, RSMo, which performs a public function on behalf of a first class non-charter county and which has as a primary purpose to enter into contracts with the first class county and engage primarily in activities carried out pursuant to an agreement with the first class county?

The duties of a county auditor of a first class non-charter county include those found in Section 55.160, RSMo 1986, which provides:

> 55.160. Duties (second class and certain first class counties).--The auditor of each county of the first class not having a charter form of government and of each county of the second class shall keep an inventory of all county property under the control and management of the various officers and departments and shall annually take an inventory of such property

showing the amount, location and estimated value thereof. He shall keep accounts of all appropriations and expenditures made by the county commission, and no warrant shall be drawn or obligation incurred without his certification that an unencumbered balance, sufficient to pay the same, remain in the appropriate account or in the anticipated revenue fund against which such warrant or obligation is to be charged. He shall audit the accounts of all officers of the county annually or upon their retirement from office. The auditor shall audit, examine and adjust all accounts, demands, and claims of every kind and character presented for payment against the county, and shall in his discretion approve to the county commission of the county all lawful, true, just and legal accounts, demands and claims of every kind and character payable out of the county revenue or out of any county funds before the same shall be allowed and a warrant issued therefor by the commission. Whenever the auditor thinks it necessary to the proper examination of any account, demand or claim, he may examine the parties, witnesses, and others on oath or affirmation touching any matter or circumstance in the examination of such account, demand or claim before he allows same. The auditor shall not be personally liable for any cost for any proceeding instituted against him in his official capacity. The auditor shall keep a correct account between the county and all county and township officers, and shall examine all records and settlements made by them for and with the county commission or with each other, and the auditor shall, whenever he desires, have access to all books, county records or papers kept by any county or township officer or road overseer. The auditor shall, during the first four days of each month, strike a balance in the case of each county and township officer, showing the amount of money collected by each, the amount of money due from each to the county, and the amount of money due

> from any source whatever to such office, and the auditor shall include in such balance any fees that have been returned to the county commission or to the auditor as unpaid and which since having been returned have been collected.

Section 55.161, RSMo 1986, provides in pertinent part:

> 55.161. Additional duties (second class and certain first class counties).--In addition to all other duties imposed upon the county auditor in counties of the first class not having a charter form of government and in counties of the second class, he shall have the following duties:
>
> (1) He shall audit, examine and adjust all accounts of county officials and courts operating in such counties where there is an accumulation of moneys, taxes, fees, fines and miscellaneous public funds received from any and all sources by county officials and courts operating in such counties, and which are accumulated and intended for public purposes other than the general administrative functions of the county, provided that such extra duty of accounting is to be performed in the same manner as is now by statute prescribed for the general county administrative business. He shall also audit moneys and funds belonging to any levee district organized and operating in such county, moneys to be disbursed to school districts organized and operating in such county, and moneys to be disbursed in the county for library, hospital, recreation, public health and civil defense purposes;
>
> * * *

These statutory provisions do not authorize a county auditor to audit not-for-profit corporations organized under Chapter 355, RSMo, nor do we find any other statute authorizing such audits by a county auditor. Public officers have only such power and authority as are clearly conferred by law or necessarily implied from the powers granted. 67 C.J.S. Officers

and Public Employees § 190. See also Missouri Attorney General Opinion No. 400, Rabbitt, 1963, a copy of which is enclosed. No statutory provision can be found which would authorize a county auditor in a first class non-charter county to perform an audit of a not-for-profit corporation organized under Chapter 355, RSMo, even if the corporation performs a public function on behalf of the county and has as a primary purpose to enter into contracts with the county and engage in activities carried out pursuant to an agreement with the county. Therefore, we conclude a county auditor in a first class non-charter county is not authorized to conduct such an audit.[1]

In Missouri Attorney General Opinion No. 21, Lehr, 1976, a copy of which is enclosed, this office concluded the State Auditor did not have the authority to audit the Kansas City Philharmonic Association, a not-for-profit corporation, because there existed no statutory authority which would allow the State Auditor to audit a not-for-profit corporation. This was the case even though the Kansas City Philharmonic Association received substantial funding from a state agency. The reasoning in this opinion would appear to be applicable to the question you have asked.

CONCLUSION

It is the opinion of this office that a county auditor of a first class non-charter county is not authorized to conduct an audit of a corporation organized under Chapter 355, RSMo, even if the corporation performs a public function on behalf of the county and has as a primary purpose to enter into contracts with the county and engage in activities carried out pursuant to an agreement with the county.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures:
Opinion No. 400, Rabbitt, 1963
Opinion No. 21, Lehr, 1976

---

1. While we conclude a county auditor in a first class non-charter county is not authorized to conduct such an audit, the county auditor is authorized to examine records of the corporation to the extent such examination relates to the duties of the county auditor. For example, pursuant to Section 55.160, the auditor "shall audit, examine and adjust all accounts, demands, and claims of every kind and character presented for payment against the county." Section 55.160 further provides: "Whenever the auditor thinks it necessary to the proper examination of any account, demand or claim, he may examine the parties, witnesses, and others on oath or affirmation touching any matter or circumstance in the examination of such account, demand or claim before he allows same."

COUNTIES:
DEPARTMENT OF MENTAL HEALTH:
MENTAL HOSPITAL:
MENTAL RETARDATION:
PUBLIC ADMINISTRATOR:
STATE HOSPITALS:
STATE MENTAL HOSPITALS:

The Saline County Public Administrator is not eligible to employ a secretary under the provisions of subsection 2 of Section 473.737, RSMo Supp. 1989.

May 30, 1990

OPINION NO. 52-90

The Honorable Thomas W. Marshall
Representative, District 116
State Capitol Building, Room 235BA
Jefferson City, Missouri 65101

Dear Representative Marshall:

This opinion is in response to your question asking if the Saline County Public Administrator is eligible to employ a secretary under the provisions of Section 473.737, as enacted in Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bills Nos. 127, 72, 161, 171, 275 & 120, 85th General Assembly, First Regular Session (1989) (hereinafter "Senate Bills Nos. 127, 72, 161, 171, 275 & 120").

The answer to this question depends upon the interpretation of the term "state mental hospital" and whether the term includes a mental retardation facility.

Subsection 2 of Section 473.737, RSMo Supp. 1989, as enacted by Senate Bills Nos. 127, 72, 161, 171, 275 & 120, provides:

> 2. Each public administrator of a county, except a county of the first class having a charter form of government, in which a state mental hospital is located shall be entitled to one secretary for one hundred cases or more handled by the office of the public administrator in the immediately preceding calendar year. Each secretary employed pursuant to the provisions of this subsection shall be paid in the same pay range as a court clerk II in the circuit court personnel system. All compensation paid secretaries employed pursuant to the provisions of this section shall be paid out of the county treasury and the commissioner of

> administration shall annually reimburse each county for the compensation so paid upon proper demand being made out of appropriations made for that purpose. The public administrator in such counties may also appoint a person to act as public administrator to serve during the absence of the public administrator. [Emphasis added.]

You have provided the following statement of facts as being relevant to your question:

> The bill in question authorized a secretary for public administrators in counties where a "state mental hospital is located." There is currently no definition of "state mental hospital" in the statutes. There was a definition of "hospital" in the 1969 statutes which included the then Marshall State School and Hospital, that definition is no longer in the statutes. The renamed Marshall Habilitation Center still includes a hospital which treats patients placed with the Department of Mental Health, and the additional work load is placed on the county public administrator because of the facility's existence.

We note that Marshall, Missouri is located in Saline County.

Section 630.003.5, RSMo 1986, referring to the facility located in Marshall, Missouri, states as follows:

> 5. There is hereby established within the department of mental health a division of mental retardation and developmental disabilities. The director of the division shall be appointed by the director of the department. The division shall administer all state facilities under the direction and authority of the department director. The Marshall State School Hospital, the Carrollton State School Hospital, the Higginsville State School Hospital, the St. Louis State School Hospital and the regional diagnostic clinics located at Albany, Hannibal, Joplin, Kansas City, Kirksville, Poplar Bluff, Rolla, Sikeston

> and Springfield and other similar facilities as may be established, are transferred by type I transfer to the division of mental retardation and developmental disabilities. [Emphasis added.]

Section 633.005(4), RSMo 1986, defines a "mental retardation facility," of which the facility at Marshall is one, as:

> 633.005. Definitions.--As used in this chapter, unless the context clearly requires otherwise, the following terms shall mean:
>
> * * *
>
> (4) "Mental retardation facility", a private or department facility, other than a regional center, which admits persons for residential habilitation and other services and which is qualified or licensed as such by the department pursuant to chapter 630, RSMo;
>
> * * *

Section 633.120, RSMo 1986, specifies the functions of a mental retardation facility as:

> 633.120. Referral for admission to facility, when--admission or rejection, appeal--consent.--1. A regional center may refer a client for admission to a mental retardation facility only if determined by a comprehensive evaluation that:
> (1) The person is mentally retarded;
> (2) The person needs residential habilitation and other services for the protection of himself or others;
> (3) The mental retardation facility offers a program which best meets the person's needs; and
> (4) The mental retardation facility is the least restrictive environment available.
>
> 2. The regional center shall forward its comprehensive evaluation containing the determination under subsection 1 of this

> section and such other records as are necessary to enable the mental retardation facility to determine whether to accept or reject the referral.
>
> 3. The head of a private mental retardation facility may, and the head of a department mental retardation facility shall, admit the person if, as a result of reviewing the evaluation, the head of the mental retardation facility determines that the client is appropriate for admission as a resident and suitable accommodations are available. If the head of a department mental retardation facility rejects the referral, the regional center may appeal the rejection to the division director. After consulting with the head of the referring regional center and the head of the department mental retardation facility, the division director shall determine the appropriate disposition of the client.
>
> * * *
>
> 5. The head of a mental retardation facility shall have an individualized habilitation plan for each resident within thirty days of the resident's admission. Such plan shall include a statement regarding the resident's anticipated length of stay in the facility and the feasibility of least restrictive alternatives.
>
> * * *

Section 630.005(15), RSMo 1986, defines "individualized habilitation plan" as:

> 630.005. Definitions.--1. As used in chapters 630, 631, 632, and 633, RSMo, unless the context clearly requires otherwise, the following terms shall mean:
>
> * * *
>
> (15) "Individualized habilitation plan", a document which sets forth habilitation goals and objectives for

> mentally retarded or developmentally disabled residents and clients, and which details the habilitation program as required by law, rules and funding sources;
>
> * * *

A "mental retardation facility" such as at Marshall can be contrasted with a "mental health facility" which is defined in Section 632.005(11), RSMo Supp. 1989, as:

> 632.005. Definitions.--As used in chapter 631, RSMo, and this chapter, unless the context clearly requires otherwise, the following terms shall mean:
>
> * * *
>
> (11) "Mental health facility", any residential facility, public or private, which can provide evaluation, treatment and, inpatient care to persons suffering from a mental disorder or mental illness and which is recognized as such by the department or any outpatient treatment program certified by the department of mental health. No correctional institution or facility, jail, regional center or mental retardation facility shall be a mental health facility within the meaning of this chapter; [Emphasis added.]

Examples of a mental health facility include the hospitals at Fulton and St. Joseph, among others.

As you noted, the term "state mental hospital" is not statutorily defined. In attempting to determine the meaning of "state mental hospital" as used in Section 473.737.2, "[t]he primary rule of statutory construction is to ascertain the intent of the legislature from the language used . . . and to consider the words used in their plain and ordinary meaning." Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). The standard in determining if the language is clear and unambiguous is whether the statute's terms are plain and clear to one of ordinary intelligence. Id. at 31.

Historically, the terms "state mental hospital" and "state hospital" have referred to hospitals which are now defined as "mental health facilities." In Van Loo v. Osage County, 141

S.W.2d 805 (Mo. 1940) an individual found to be of unsound mind was confined to the "state hospital" at Fulton. See also Ussery v. Haynes, 127 S.W.2d 410 (Mo. 1939). In State ex rel. Moser v. Montgomery, 186 S.W.2d 553 (K.C. Ct. App. 1945) an individual adjudged to be of unsound mind was committed to "State Hospital No. 2" at St. Joseph. The court committed to the "state hospital" at St. Joseph a juvenile found to be a dangerous person with severe mental illness. Sherrill v. Wilson, 653 S.W.2d 661 (Mo. banc 1983). State v. Montague, 510 S.W.2d 776 (Mo. App. 1974) concerned an individual found not guilty by reason of insanity and committed to the "state mental hospital" in Fulton. In Foote v. State, 650 S.W.2d 28 (Mo. App. 1983) the patient sought release from the "state mental hospital" in Fulton pursuant to Section 552.040, RSMo Supp. 1980.

Conversely, the term "state school" has been used to identify a mental retardation facility. See Missouri Attorney General Opinion No. 25, Duval, January 16, 1961 (Children committed to a State Training School for mentally retarded children by the juvenile court shall be accepted by said school subject to availability of suitable accommodation at the school.) and Opinion No. 62, Mitchell, May 10, 1954 (involving the child of a woman inmate at the "state school" at Marshall).

We conclude the term "state mental hospital" as used in subsection 2 of Section 473.737 does not include a "mental retardation facility" such as that at Marshall. The term "state mental hospital" has historically not been applied to a facility such as at Marshall and the definition of "mental health facility" in Section 632.005(11) specifically excludes a "mental retardation facility." Therefore, the Saline County Public Administrator is not eligible to employ a secretary under subsection 2 of Section 473.737, RSMo Supp. 1989.

CONCLUSION

It is the opinion of this office that the Saline County Public Administrator is not eligible to employ a secretary under the provisions of subsection 2 of Section 473.737, RSMo Supp. 1989.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CONSTITUTION:
GAMBLING:
LOTTERIES:
LOTTERY COMMISSION:

Additional statutory authorization is not necessary for the State Lottery Commission to formulate a lottery game where the prizes are based on the player's predictions on the outcome of professional sporting events.

February 8, 1990

OPINION NO. 53-90

The Honorable William Clay, Jr.
Representative, District 59
State Capitol Building, Room 407 A
Jefferson City, Missouri 65101

Dear Representative Clay:

This opinion is in response to your question asking:

> Is additional statutory authorization necessary in order for the state lottery commission to formulate a lottery game where the prizes are based on the player's predictions on the outcome of professional sporting events?

In conjunction with your opinion request, you have provided the following information:

> Oregon has recently started a lottery game where the player picks winners against the point spread of from four to fourteen professional football games and the player receives prize money from the lottery prize fund if he picks all games selected correctly. This system appears to be working in Oregon and interest for such a game in conjunction with the other state lottery games in this state may be present.

The term lottery has been held by the Missouri Supreme Court to include "every scheme or device whereby anything of value is for a consideration allotted by chance." State ex inf. McKittrick v. Globe-Democrat Publishing Company, 341 Mo. 862, 110 S.W.2d 705, 713 (Mo. banc 1937). Under Article III, Section 39(9) of the Missouri Constitution, as amended, the General Assembly has no power to authorize lotteries for any purpose

except as otherwise provided in Section 39(b) or Section 39(c) of Article III. Section 39(b)1 of Article III of the Missouri Constitution, as amended, allows the General Assembly to authorize a Missouri state lottery by law under the control of a State Lottery Commission. This constitutional provision was adopted by the people at a general election on November 6, 1984, and amended at a special election on August 2, 1988.

In response to this constitutional provision, the General Assembly enacted the State Lottery Law, Sections 313.200 to 313.350, RSMo. Section 313.220.1, RSMo Supp. 1989, empowers the State Lottery Commission to promulgate such rules and regulations governing the establishment and operation of a state lottery as it deems necessary and desirable to fully implement the mandate of the people expressed in the approval of the lottery amendment to Article III of the Missouri Constitution. In carrying out this mandate, the duties of the State Lottery Commission are set forth in Section 313.230, RSMo Supp. 1989. The State Lottery Commission is empowered to design and implement various types of lottery games for play in Missouri as a facet of the Missouri lottery. A lottery game is defined in Section 313.205(7), RSMo 1986, as <u>any</u> procedure authorized by written rule of the commission whereby prizes are distributed among persons who have paid, or have unconditionally agreed to pay, for tickets or shares which provide the opportunity to win prizes. A limitation is set forth in Section 313.230(1)(a), RSMo Supp. 1989, which provides that the commission may not design a lottery using the theme of casino type games or any coin- or token-operated amusement device.

Nothing in the Missouri Constitution or statutes limits the authority of the State Lottery Commission to formulate a lottery game awarding prizes based on a player's predictions of the outcome of actual professional sporting events. As long as the elements of prize, chance, and consideration are present, a game of this type can be designed and implemented in Missouri by the State Lottery Commission without additional statutory authorization.[1]

[1]Since the various professional sporting organizations have not condoned or authorized such games, such a game would have to be designed in a manner not to infringe on any trademarks or copyrights belonging to such organizations.

CONCLUSION

It is the opinion of this office that additional statutory authorization is not necessary for the State Lottery Commission to formulate a lottery game where the prizes are based on the player's predictions on the outcome of professional sporting events.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

August 14, 1990

OPINION LETTER NO. 54-90

The Honorable Jean H. Mathews
Representative, District 73
2620 North Waterford Drive
Florissant, Missouri 63033

Dear Representative Mathews:

You have requested the opinion of this office in response to two questions concerning a letter dated August 1989 from Vincent C. Schoemehl, Jr. and Thomas A. Villa relating to a sales tax proposition voted on August 8, 1989. The letter recites it was paid for by the City of St. Louis. A copy of the letter is attached hereto as Exhibit A. The questions you posed are as follows:

> 1. Is the City of St. Louis in violation of Section 115.646, RSMo, as passed by the General Assembly in 1988 in that it printed and mailed to every registered voter a letter signed by its two top elected office holders advocating the passage of Proposition A on the August 8, 1989 ballot?
>
> 2. Is the City of St. Louis in violation of Section 130.051, RSMo 1986, in that there has been no required report filed on its behalf with the appropriate office?

Section 115.646, RSMo Supp. 1989, to which you refer provides:

> 115.646. Public funds expenditure by political subdivision officers or employee, prohibited--personal appearances permitted.--No contribution or expenditure

> of public funds shall be made directly by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office. This section shall not be construed to prohibit any public official of a political subdivision from making public appearances or from issuing press releases concerning any such ballot measure. [Emphasis added.]

The primary rule of statutory construction is to ascertain the intent of the lawmakers from the language used, to give effect to that intent if possible, and to consider words used in a statute in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). The ordinary, usual and commonly understood meaning may be derived from the dictionary. Boone County Court v. State, 631 S.W.2d 321 (Mo. banc 1982).

The primary issue for consideration is whether or not the attached letter "advocates" or "supports" the ballot measure. Webster's Third New International Dictionary defines the verb "advocate" as follows:

> "to plead in favor of: defend by argument before a tribunal or the public: support or recommend publicly"

In deciding whether the letter "advocates" or "supports" the sales tax proposition, we look to such factors as the style, tenor and timing of the publication. See Stanson v. Mott, 17 Cal.3d 206, 130 Cal. Rptr. 697, 551 P.2d 1, 12 (1976). In considering the letter about which you are concerned, we conclude the letter "advocates" or "supports" the ballot proposition and is within the prohibition of Section 115.646, RSMo Supp. 1989, if public funds were expended in the preparation and mailing of the letter.

Your second question concerns whether the City is required to file a report under Section 130.051, RSMo 1986. Enclosed herein is a copy of Missouri Attorney General Opinion No. 21-88 which addressed a similar question with respect to school districts. Section 130.051, RSMo 1986 is quoted extensively in that opinion. The reasoning in that opinion dealing with school districts is equally applicable to the City of St. Louis. Therefore, if the amount of public funds expended in the

preparation and mailing of the letter requires a report to be filed under Section 130.051, RSMo 1986, the filing of a report by the City is required.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 21-88

Office of the Mayor
Room 200 - City Hall
St. Louis, Missouri 63103

Office of the President
Board of Aldermen
Room 230 - City Hall
St. Louis, Missouri 63103

August 1989

Dear Saint Louisan:

On Tuesday, August 8, you will have the opportunity to vote for Proposition A to retain a 3/8 cent sales tax that is currently being collected. This tax brings in $12 million which represents 4 percent of the City's annual revenue. These funds are used to provide essential services to City residents.

In March of 1987, Saint Louis voters overwhelmingly supported the retention of the 3/8 cent sales tax for a three (3) year period which would expire in March 1990. After the election, the Mayor appointed a blue ribbon panel of community and government leaders to review the City's entire tax structure and recommend reforms that would be fair to citizens and business concerns.

This panel, which was known as the Saint Louis Tax Reform Commission, recommended the elimination of the head tax, the revamping of the City's business license system and the institution of a new payroll expense tax on for-profit businesses. These reforms were approved by the voters in 1988. The Commission also recommended that the 3/8 cent sales tax be made permanent in order to maintain City services and to keep an equitable balance between business and individual taxes.

The passage of Proposition A will ensure that basic services such as fire and police protection, trash collection, recreation programs and street lighting can be maintained at their current levels. Proposition A will not impose a new tax. Its passage will ensure that the current flow of tax revenue will be uninterrupted.

We believe the retention of this tax is crucial to our City's ability to provide essential services.

Sincerely,

Vincent Schoemehl Jr.

Vincent C. Schoemehl, Jr.
Mayor

Thomas A. Villa

Thomas A. Villa
President, Board of Aldermen

This public information letter was paid for by the City of Saint Louis.

EXHIBIT A

SCHOOLS:
SCHOOL DISTRICTS:
TEACHERS:
TUITION:

Section 168.151, RSMo 1986, prohibits a school district from collecting from a teacher employed by the district tuition for a non-resident child of the teacher to attend school in the district.

September 28, 1990

OPINION NO. 56-90

The Honorable Jeff W. Schaeperkoetter
Senator, District 23
State Capitol Building, Room 434
Jefferson City, Missouri 65101

Dear Senator Schaeperkoetter:

This opinion is in response to your question asking:

> Does Section 168.151, RSMo, prohibit a school district from collecting from a teacher tuition for a non-resident child of the teacher to attend school in the district?

In the statement of facts accompanying your question, you mention that a school district has adopted a tuition reduction program as a fringe benefit for professional and support staff. The program allows non-resident children of professional and support staff to attend school in the district at fifty percent of the normal tuition rate for non-resident students. The apparent concern is that the collection of any tuition from a teacher for a non-resident child of the teacher may violate Section 168.151, RSMo 1986.

Section 168.151, RSMo 1986, provides:

> 168.151. Solicitation of or payment by teacher of expenses of school prohibited, penalty.--It is unlawful for any school board or any member or employee of a school board to solicit or to receive any money from any teacher employed by their district for the purpose of paying tuition or any other expenses of the operation of schools. It is unlawful for

> any teacher to contribute or to agree to contribute any portion of his salary to his school board, or any member, or employee thereof, for the purposes stated above. Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not to exceed one thousand dollars or by imprisonment for not more than one year or by both fine and imprisonment.

Legislative intent should be ascertained from the language used, considering the words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Section 168.151 expressly prohibits a school district from receiving any money from a teacher in the district for tuition purposes. Therefore, we conclude that Section 168.151 prohibits a school district from collecting from a teacher employed by the district tuition for a non-resident child of the teacher to attend school in the district.

CONCLUSION

It is the opinion of this office that Section 168.151, RSMo 1986, prohibits a school district from collecting from a teacher employed by the district tuition for a non-resident child of the teacher to attend school in the district.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

DEPARTMENT OF PUBLIC SAFETY: LIQUOR: (1) Subsection 2 of Section 311.332, RSMo Supp. 1989, does not prohibit a wholesaler of intoxicating liquor or wine containing alcohol in excess of five percent by weight from meeting lower competing prices and discounts for liquor or wine of the same brand and trade name and of like age and quality as provided in Section 311.336, RSMo 1986, (2) the amended price schedule allowed in Section 311.336 shall be in effect for the calendar month following the amendment as provided in that section, and (3) the lower competing price referred to in Section 311.336 is based on the filed schedule of prices and not temporary price reductions authorized by subsections 2 and 3 of Section 311.332.

April 10, 1990

OPINION NO. 58-90

The Honorable James M. Talent
Representative, District 92
State Capitol Building, Room 204
Jefferson City, Missouri 65101

Dear Representative Talent:

This opinion is in response to your questions asking:

1. Does Section 311.332(2), or any other statute, prohibit a wholesaler of intoxicating liquor or wine containing alcohol in excess of five percent from meeting lower competing prices and discounts for liquor or wine of the same brand and trade name and of like age and quality as provided in Section 311.336, RSMo?

2. Do the lower competing prices as provided in Section 311.336, RSMo 1986, mean the lowest base price less the Section 311.332.2, RSMo Supp. 1989, temporary four percent price reductions?

3. Are the amendments provided in Section 311.336, RSMo 1986, temporary or permanent price decreases?

4. How will Section 311.332.3, RSMo Supp. 1989, "close out merchandise" affect Section 311.336, RSMo 1986, lower competing prices? (See Attorney General Opinion Letter No. 93-88.)

The Honorable James M. Talent

You state the following facts as being relevant to your first question:

> "Wholesaler A" posts the price of Brand "X" at $10.00 per liter pursuant to Section 311.334. "Wholesaler B" posts the price of Brand "X" at $9.00 per liter. "Wholesaler A" amends the posted $10.00 price to $9.00 as provided in Section 311.336. The Supervisor of Liquor Control notifies "Wholesaler A" that the amended posting is rejected as being in violation of subsection (2) of Section 311.332.
>
> "Wholesaler A" is not initiating the price reduction as contemplated in Section 311.332 but rather using the mechanism of Section 311.336 to meet competing prices and discounts.

Section 311.334, RSMo 1986, prohibits the sale of intoxicating liquor and wine unless the wholesaler has filed with the Supervisor of Liquor Control a schedule of prices. Such section provides:

> 311.334. Wholesaler to file schedule of prices, contents.--No intoxicating liquor and wine of any kind shall be sold by a wholesaler to a retailer duly licensed to sell intoxicating liquor and wine at retail, or purchased by a wholesaler for a retailer or by a retailer through a wholesaler, unless a schedule as provided by this section shall be filed by the wholesaler with the supervisor of liquor control and is then in effect. The schedule shall be in writing, duly verified and filed in the number of copies and in such form as required by the supervisor, and shall contain with respect to each item thereon the exact brand or trade name, capacity of package, nature of contents, age and proof, the per bottle and per case price to retailers, the number of bottles contained in each case, and the size thereof, which prices shall be individual for each item, and not in "combination" with any other item or items, the discounts for quantity, if any, and the discounts for time of payment, if any.

Section 311.336, RSMo 1986, provides:

311.336. Schedules, filed when--other wholesalers may meet prices, how--sales at prices in schedule required--public inspection.--Each such schedule shall be filed on or before the tenth day of each month, and the prices and discounts therein set forth shall become effective on the first day of the calendar month following the filing thereof, and shall be in effect for and during such calendar month. Within ten days after the filing of such schedule the supervisor shall make all of such schedules or a composite thereof available for inspection by all wholesale licensees. Within three days, excluding Sundays, after such inspection is provided for, a wholesaler may amend his filed schedule for sales to a retailer, or purchase for a retailer or by a retailer through a wholesaler in order to meet lower competing prices and discounts for liquor or wine of the same brand and trade name and of like age and quality, filed pursuant to this section or section 311.334 by any licensee selling such brand; provided, however, such amended prices may not be lower and discounts not greater than those to be met. Any amended schedule so filed shall become effective on the first day of the calendar month following the filing thereof, and shall be in effect for and during such calendar month. No brand of liquor or wine shall be sold or purchased for a retailer by a wholesaler or by a retailer through a wholesaler except at the price or prices then in effect according to the wholesaler's filed schedule, and no discount shall be granted except as set forth in the schedule then in effect. All schedules filed shall be subject to public inspection from the time that they are required to be made available for inspection by licensees and shall not be in any manner considered confidential. Each wholesaler shall retain in his licensed premises for inspection by licensees a copy of his filed schedules then in effect. The supervisor of liquor control may make such rules and regulations as shall be appropriate to carry out the purpose of this section and sections 311.332 and 311.334. [Emphasis added.]

Both Section 311.334, RSMo 1986, and Section 311.336, RSMo 1986, were enacted in 1955 and have remained unchanged.

Section 311.332, RSMo Supp. 1989, provides:

> 311.332. Wholesale price regulation, discrimination prohibited--discounts authorized, when--rebate coupons allowed--delivery to certain organizations for nonresale purposes, allowed when.--1. Except as provided in subsections 2 and 3 of this section, it shall be unlawful for any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in excess of five percent by weight to persons duly licensed to sell such intoxicating liquor and wine at retail, to discriminate between retailers or in favor of or against any retailer or group of retailers, directly or indirectly, in price, in discounts for time of payment, or in discounts on quantity of merchandise sold, or to grant directly or indirectly, any discount, rebate, free goods, allowance or other inducement, excepting a discount not in excess of one percent for quantity of liquor and wine, and a discount not in excess of one percent for payment on or before a certain date. The delivery of manufacturer rebate coupons by wholesalers to retailers shall not be a violation of this subsection.
>
> 2. Except as provided in subsection 3 of this section, any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in excess of five percent by weight to persons duly licensed to sell such intoxicating liquor and wine at retail may offer a price reduction of not more than four percent of his price schedule for any brand, age, proof, and size bottle or package. Such price reduction shall apply for a thirty-day period, shall not be offered by any wholesaler more than three times in any calendar year, and shall not be offered during successive months.
>
> 3. Any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in excess of five percent by weight

> to persons duly licensed to sell such intoxicating liquor and wine at retail may offer a price reduction of more than four percent of the scheduled price on close out merchandise. "Close out merchandise" is any item which has been in the wholesaler's inventory for more than six months. The price of close out merchandise may be decreased, but shall not be increased, monthly for up to and including six consecutive months. A wholesaler shall not purchase any item of intoxicating liquor or wine of the same year and vintage he has classified as close out merchandise during the period of such classification. A wholesaler shall not purchase, sell, or offer to sell any item of intoxicating liquor or wine of the same year and vintage he has classified as close out merchandise until eighteen months have elapsed since the wholesaler's last offer to sell the item as close out merchandise. This subsection shall become effective January 1, 1988.
>
> 4. Manufacturers or wholesalers shall be permitted to deliver or cause to be delivered beer, wine or nonintoxicating beer for nonresale purposes to any unlicensed person or any licensed retail dealer who is a charitable or religious organization as defined in section 313.005, RSMo, or educational institution, at any location or licensed premises, provided, such beer, wine or nonintoxicating beer is unrelated to the organization's or institution's licensed retail operation. Any manufacturer or wholesaler providing nonresale items shall keep a record of any deliveries made pursuant to this subsection. [Emphasis added.]

Subsection 2 was added to Section 311.332 in 1985 (Laws of Missouri, 1985, page 750) and subsections 3 and 4 were added in 1987 (Laws of Missouri, 1987, page 736).

Legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Webster's New International Dictionary, Second Edition, defines "meet" as "to come up to; to conform to; to be even with; to equal; match . . ." It is apparent from the

language of Section 311.336, RSMo 1986, that the legislature intended to allow wholesalers an opportunity to match lower competing prices and discounts.

Subsection 2 of Section 311.332 provides wholesalers an opportunity to offer a price reduction three times a year. To conclude that the language concerning a four percent price reduction in subsection 2 of Section 311.332 as enacted in 1985, prohibits a wholesaler from meeting a lower competing price as authorized by Section 311.336 would render Section 311.336 devoid of meaning. All statutes applicable to the same subject should be harmonized to preserve the integrity of both. Conrad v. Bowers, 533 S.W.2d 614, 622 (Mo. App. 1975); State ex rel. Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985). Therefore, we conclude that subsection 2 of Section 311.332 does not prohibit a wholesaler from meeting lower competing prices and discounts as authorized by Section 311.336.

In response to your third question concerning the duration of amendments provided in Section 311.336, the amendments to a wholesaler's price schedule made pursuant to Section 311.336, RSMo 1986, "become effective on the first day of the calendar month following the filing thereof, and shall be in effect for and during such calendar month," as provided in that section.

In answer to your second question, the opportunity provided in Section 311.336 to meet lower competing prices does not mean the lower competing price less the temporary four percent price reduction authorized by subsection 2 of Section 311.332. Subsection 2 of Section 311.332 allows a wholesaler to "offer a price reduction of not more than four percent of his price schedule" up to three times in a calendar year. Section 311.336 refers to meeting the lower competing price and discounts in the filed schedule of prices and does not refer to matching a special temporary reduction. While Section 311.336 refers to lower competing price and "discounts," this means the discounts discussed in Section 311.334 for quantity and time of payment. Subsection 2 of Section 311.332 refers to a "price reduction" from the filed schedule, but not to a "discount."

Similarly, in answer to your fourth question, subsection 3 of Section 311.332 does not affect Section 311.336 lower competing prices. Subsection 3 of Section 311.332 defines "close out merchandise" as "any item which has been in the wholesaler's inventory for more than six months." That definition is more fully discussed in Opinion Letter No. 93-88, a copy of which is attached. Subsection 3 of Section 311.332 allows a wholesaler to offer a price reduction of more than four percent of the scheduled price on close out merchandise. Section 311.336 allows amendments to a price schedule to meet the lower competing prices of a filed schedule of prices and does not refer to price reductions for close-out merchandise.

CONCLUSION

It is the opinion of this office that (1) subsection 2 of Section 311.332, RSMo Supp. 1989, does not prohibit a wholesaler of intoxicating liquor or wine containing alcohol in excess of five percent by weight from meeting lower competing prices and discounts for liquor or wine of the same brand and trade name and of like age and quality as provided in Section 311.336, RSMo 1986, (2) the amended price schedule allowed in Section 311.336 shall be in effect for the calendar month following the amendment as provided in that section, and (3) the lower competing price referred to in Section 311.336 is based on the filed schedule of prices and not temporary price reductions authorized by subsections 2 and 3 of Section 311.332.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 93-88

COLLECTOR'S DEEDS:
COUNTY COLLECTORS:
DELINQUENT TAX SALES:
TAX DEEDS:

Purchasers of property at third offering tax sales are entitled to receive a collector's deed without awaiting any period of redemption and are exempt from the requirements of Section 140.405, RSMo Supp. 1989.

August 10, 1990

OPINION NO. 61-90

W. James Icenogle
Camden County Prosecuting Attorney
P. O. Box 1085
Camdenton, Missouri 65020

Dear Mr. Icenogle:

This opinion is in response to your question asking:

> Must a person who purchased property at a third offering of delinquent lands by a county collector comply with the affidavit and/or notice provisions of Section 140.405 R.S.Mo. before he is entitled to receive a deed from the collector?

In the statement of facts accompanying your question, you state:

> A Missouri resident, hereinafter "purchaser", was the highest bidder for a parcel at a collector's tax sale. The property had been offered for sale by the collector for two consecutive years. The purchaser has demanded the issuance and delivery of a collector's deed as under the provisions of Section 140.405, R.S.Mo. The purchaser has filed no affidavit that a title search has revealed no publicly recorded deed of trust, etc., nor has he provided notice by certified mail to the holders of publicly recorded deeds of trust, etc., under the provisions of that statute.

W. James Icenogle

There are two relevant statutory provisions which pertain to the third offering of tax delinquent lands by the county collector and the rights and/or requirements of the purchaser.

Section 140.250, RSMo 1986, provides in applicable part:

> 140.250. Third offering of delinquent lands and lots--subsequent sale--collector's deed.--1. Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the collector of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs provided by law, then such county collector shall at the next regular tax sale of lands for delinquent taxes sell same to the highest bidder, and there shall be no period of redemption from such sales.
>
> 2. No certificate of purchase shall issue as to such sales, but the purchaser at such sales shall be entitled to the issuance and delivery of a collector's deed upon completion of title search action as specified in section 140.405. [Emphasis added.]

* * *

Section 140.405, RSMo Supp. 1989, provides:

> 140.405. Purchaser of property at delinquent land tax auction, deed issued to, when--loss of interest, when.--Any person purchasing property at a delinquent land tax auction, other than persons purchasing property at a third offering for which there is no period of redemption pursuant to section 140.250, shall not acquire the deed to the real estate, as provided for in section 140.420, until he meets with the following requirement or until he makes affidavit that a title search has revealed no publicly recorded deed of trust, mortgage, lease, lien or claim on the real estate. At least ninety

> days prior to the date when he is authorized to acquire the deed, the purchaser shall notify any person who holds a publicly recorded deed of trust, mortgage, lease, lien or claim upon that real estate of the latter person's right to redeem his publicly recorded security or claim. Notice shall be sent by certified mail to any such person at his last known available address. Failure of the purchaser to comply with this provision shall result in his loss of all interest in the real estate. [Emphasis added.]

Senate Bill No. 707, 82nd General Assembly, Second Regular Session (1984) (hereinafter "Senate Bill No. 707"), initially enacted Section 140.405 and amended Section 140.250. Section 140.405 as initially enacted provided:

> 140.405. Purchaser of property at delinquent land tax auction, deed issued to, when--loss of interest, when.--Any person purchasing property at a delinquent land tax auction shall not acquire the deed to the real estate, as provided for in section 140.420, RSMo, until he meets with the following requirement or until he makes affidavit that a title search has revealed no publicly recorded deed of trust, mortgage, lease, lien or claim on said real estate. At least ninety days prior to the date when he is authorized to acquire the deed, the purchaser shall notify any person who holds a publicly recorded deed of trust, mortgage, lease, lien or claim upon that real estate of the latter person's right to redeem his security or claim. Notice shall be sent by certified mail to any such person at his last known available address. Failure of the purchaser to comply with this provision shall result in his loss of all interest in said real estate. Laws of Missouri, 1984, page 432.

Senate Bill No. 707 amended subsection 2 of Section 140.250 by substituting "issuance and delivery of a collector's deed upon completion of title search action as specified in section 140.405," for "immediate issuance and delivery of a collector's deed."

W. James Icenogle

In 1987 House Bill No. 283, 84th General Assembly, First Regular Session (hereinafter "House Bill No. 283") amended Section 140.405 to insert the exception for "persons purchasing property at a third offering for which there is no period of redemption pursuant to section 140.250." However, House Bill No. 283 did not amend Section 140.250 so that Section 140.250 remains the same as enacted by Senate Bill No. 707.

When construing statutes, the courts seek to ascertain the legislature's intent in enacting the measure and to give effect to the plain language of the statute viewed as a whole. A. B. v. Frank, 657 S.W.2d 625, 628 (Mo. banc 1983). It is a fundamental precept of statutory construction that the legislature acted with knowledge of the subject matter and the existing law. Holt v. Burlington Northern Railroad Company, 685 S.W.2d 851, 857 (Mo. App. 1984). When the legislature amends a statute, changing its language, it is presumed to have intended the change to have some effect. Id. When the legislature has altered an existing statute, such change is deemed to have an intended effect, and the legislature will not be charged with having done a meaningless act. State v. Sweeney, 701 S.W.2d 420, 423 (Mo. banc 1985).

In 1984 when the legislature enacted Section 140.405 and amended Section 140.250, the apparent intent was to require a purchaser at a delinquent land tax auction to comply with the title search action as specified in Section 140.405. In 1987 when the legislature enacted the exception for "persons purchasing property at a third offering for which there is no period of redemption pursuant to section 140.250," the legislature must have intended that 1987 change to have some effect. The legislature should not be charged with having done a meaningless act in 1987. Therefore, we conclude that the 1987 amendment to Section 140.405 exempts purchasers of property at third offering tax sales from the requirements of Section 140.405.

Under Section 140.250, there is no period of redemption from a third offering tax sale. Based on the 1987 amendment to Section 140.405 as discussed above, purchasers of property at third offering tax sales are exempt from the requirements of Section 140.405. Therefore, such purchasers of property at third offering tax sales are entitled to receive a collector's deed without awaiting any period of redemption and are exempt from the requirements of Section 140.405.

W. James Icenogle

CONCLUSION

It is the opinion of this office that purchasers of property at third offering tax sales are entitled to receive a collector's deed without awaiting any period of redemption and are exempt from the requirements of Section 140.405, RSMo Supp. 1989.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

CITIES, TOWNS AND VILLAGES:
CITY UTILITIES:
CONSTITUTIONAL CHARTER CITIES:
WATERWORKS:

A constitutional charter city pursuant to Section 91.600, RSMo 1986, may acquire lands by the power of eminent domain in a county other than the county where the city is situated to dam up a river to form a water reservoir as a source of water supply for the city.

June 25, 1990

OPINION NO. 65-90

The Honorable Thomas Macdonnell
Representative, District 140
State Capitol Building, Room 134
Jefferson City, MO 65101

Dear Representative Macdonnell:

This opinion is in response to your question asking:

> May a city-owned and operated utility take, by power of eminent domain, land in a county other than the county where the city is located to dam up a river to form a water reservoir as a source of water supply for the city?

We understand your question relates to the City of Springfield, a constitutional charter city under Article VI, Section 19 of the Missouri Constitution. Section 82.240, RSMo 1986, which is the general provision authorizing constitutional charter cities to exercise the power of eminent domain, allows constitutional charter cities to condemn lands outside the corporate boundaries of the city but only within the territorial limits of the county in which the city is situated. Such section provides:

> 82.240. Parks, cemeteries may be provided for.--It shall be lawful for any such city to make provision in its charter, or by amendment thereof, to acquire and hold by gift, devise, purchase or by the exercise of the power of eminent domain by condemnation proceedings, lands for public use, either within the corporate boundaries of such city or outside of such corporate

> boundaries, and within the territorial limits of the county in which such city may be situated, for public parks, cemeteries, penal institutions, hospitals, rights-of-way for sewers, or for any other public purpose, and to provide for managing, controlling and policing the same.

On its face, Section 82.240 does not authorize a constitutional charter city to condemn lands in a county other than the county where the city is located. State ex rel. White v. Eiffert, 774 S.W.2d 152 (Mo.App. 1989).

However, Section 91.600, RSMo 1986, provides in pertinent part:

> 91.600. Waterworks property, how acquired--may issue bonds, make contracts (certain cities).--Every city organized and existing under the provisions of section 16 of article IX of the Constitution of Missouri of 1875, or section 19 of article VI of the Constitution of Missouri of 1945, shall have the right and power to construct, maintain and operate waterworks to supply the city and all persons and parties therein with water and may for such purpose, take, hold, use and dispose of real estate and personal property whether within or outside of the city, or whether within or outside of the state of Missouri, necessary to accomplish such object. It may acquire such property by purchase, donation or an exercise of the power of eminent domain, and may do whatever may be necessary to the exercise of the powers herein granted. . . .

Section 91.600 is a much broader grant of authority than Section 82.240 and authorizes constitutional charter cities to condemn lands in counties other than the county in which the city is located for purposes of construction, maintenance and operation of waterworks. The construction of a dam across a river to create a reservoir as a source of water supply for the city would be the construction, maintenance or operation of a waterworks under Section 91.600. Roberts v. City of Maryville, 750 S.W.2d 69 (Mo. banc 1988). In State ex rel. White v. Eiffert, supra, the court indicated that

Section 82.240 would prohibit the City of Springfield from condemning lands in counties other than the county in which that city is located. That case, however, dealt with the taking of lands for purposes of constructing and maintaining electric power lines, not with the construction and maintenance of waterworks.

In determining the extent of authority granted to constitutional charter cities by Section 91.600, it is important to note Section 250.240, RSMo 1986, which provides:

> 250.240. Purposes of law.--It is the purpose of this chapter to enable cities, towns and villages and sewer districts to protect the public health and welfare by preventing or abating the pollution of water and creating means for supplying wholesome water, and to these ends every such municipality and sewer district shall have the power to do all things necessary or convenient to carry out such purpose, in addition to the powers conferred in this chapter. This chapter is remedial in nature and the powers hereby granted shall be liberally construed.

When one statute deals with a subject in general terms and another deals with a part of the same subject in a more definite way, the two should be read together and harmonized, if possible, but to the extent of repugnancy between them the special will prevail over the general statute. Laughlin v. Forgrave 432 S.W.2d 308, 313 (Mo. banc 1968). Section 91.600 specifically deals with the construction, maintenance and operation of waterworks and does not limit the exercise of the power of eminent domain to the territorial limits of the county in which the city is situated. Section 82.240 is a general statute dealing with the authority of the city to condemn or otherwise acquire and hold lands for public purposes. Waterworks is not specifically mentioned in Section 82.240. To limit the authority of a constitutional charter city to condemn lands for waterworks purposes only to lands within the county where the city is situated would be adding a restriction to Section 91.600 which is not there. Also, when the General Assembly has geographically limited the power of cities to condemn lands for waterworks purposes it has done so specifically. See Sections 77.530 and 79.380, RSMo 1986.

Section 250.240 evidences the intent of the General Assembly to allow cities to have all the power necessary or

convenient, in addition to powers granted by Chapter 250, RSMo, for supplying water. Interpreting a limitation into Section 91.600 that is not found within that section would be inconsistent with the General Assembly's intent to provide cities with the means to obtain water as evidenced by Section 250.240.

Based on the discussion above, it is our opinion that the geographic limitation regarding a constitutional charter city's authority to condemn lands found in Section 82.240 does not apply to the authority of a constitutional charter city to condemn lands pursuant to Section 91.600 for the construction, maintenance and operation of waterworks to supply the city with water.

CONCLUSION

It is the opinion of this office that a constitutional charter city pursuant to Section 91.600, RSMo 1986, may acquire lands by the power of eminent domain in a county other than the county where the city is situated to dam up a river to form a water reservoir as a source of water supply for the city.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

ABORTION:
LIBRARIES:
PUBLIC FUNDS:
PUBLIC LIBRARIES:

Section 188.205, RSMo 1986, does not prohibit libraries (whether public or private which receive public support) from cataloging, housing, or circulating abortion material.

February 7, 1990

OPINION NO. 67-90

The Honorable Sheila Lumpe
Representative, District 88
6908 Amherst
University City, Missouri 63130

Dear Representative Lumpe:

This opinion is in response to your question asking:

> Whether Mo. Rev. Stat. Sec. 188.205 (1989) which prohibits public funds from being expended to encourage or counsel women to have abortions not necessary to save her life prohibits libraries (whether public or private which receive public support) from cataloging, housing, or circulating abortion material?

Section 188.205, RSMo 1986, states as follows:

> 188.205. Use of public funds prohibited, when.--It shall be unlawful for any public funds to be expended for the purpose of performing or assisting an abortion, not necessary to save the life of the mother, or for the purpose of encouraging or counseling a woman to have an abortion not necessary to save her life.

In Webster v. Reproductive Health Services, 492 U.S. ____, 109 S.Ct. 3040, 106 L.Ed.2d 410 (1989), the United States Supreme Court reversed the decision by the Eighth Circuit Court of Appeals which had declared the "encouraging and counseling" language of Section 188.205 unconstitutionally vague and had

further held the Missouri statute to be an unacceptable infringement of a woman's Fourteenth Amendment right to choose an abortion. The Supreme Court reversed because the controversy was moot in that the appellees contended before the Supreme Court that they were not adversely affected under the State's interpretation "that § 188.205 'is not directed at the conduct of any physician or health care provider, private or public,' but 'is directed solely at those persons responsible for expending public funds.'" Id. at 3053.

Although the decision of the Supreme Court in Webster v. Reproductive Health Services, supra, does not directly answer your question, certain arguments set forth in the State's brief clearly indicate that your question must be answered in the negative. The Attorney General submitted the following argument in the State's brief on appeal:

> The language which must be examined is "[f]or the purpose of encouraging or counseling a woman to have an abortion not necessary to save her life." In Black's Law Dictionary "encourage" is defined as follows:
>
> > In criminal law. To instigate; to incite to action; to give courage to; to inspirit; to embolden; to raise confidence; to make confident; to help; to forward; to advise.
>
> Black's Law Dictionary, 620 (4th ed. 1957). "Counseling" is defined as:
>
> > 3. Advice given by one person to another in regard to a proposed line of conduct . . . .
>
> Id. at 418.
>
> When one reads the terms "counseling" and "encouraging" in the context of the rest of the sentence, it is clear that the statute has a much narrower and specific reach than suggested by the court of appeals. The courts below read the terms as though they referred to "'encouraging or counseling' women about abortions" generally. The Attorney General of Missouri submits that this restriction [§ 188.205] is clearly designed to prohibit the expenditure of public funds for the identified purpose of affirmatively advocating to a particular

> woman that she undertake an abortion procedure not necessary to save her life. The statute does not prohibit the use of public funds to provide information regarding abortions or to inform a woman of the options she may have to cope with an unwanted pregnancy.
>
> * * *
>
> Section 188.205 is not directed at the conduct of any physician or health care provider, private or public. Instead, it is directed solely at those persons responsible for expending public funds. . . . Section 188.205 directs public officials and governing bodies not to expend funds under their control for the purpose of performing abortion services, including counseling women to have elective abortions.
>
> The statute does not forbid incidental conduct or the incidental use of funds for counseling, so long as the expenditure has a legitimate public purpose. The section refers to "encouraging" and "counseling" for a particular line of proposed conduct. The section is not vague on this score.

Webster v. Reproductive Health Services, supra, Brief for Appellants, p. 42, 43.

Although the precise language utilized in Section 188.205 has not been construed by any state court, there is no reason to depart from the statutory construction submitted on behalf of the State in the process of defending the constitutionality of the legislation. That construction is reasonable and narrowly drawn so as to avoid any unnecessary infringement of First Amendment rights.

Section 188.205 seeks to prevent public funds from being used for the specific purpose of affirmatively advocating that a woman have an elective abortion. The dissemination of information by a library about abortion does not constitute advocacy of any course of conduct; therefore, the expenditure of public funds is not barred by the statute in question.

CONCLUSION

It is the opinion of this office that Section 188.205, RSMo 1986, does not prohibit libraries (whether public or private which receive public support) from cataloging, housing, or circulating abortion material.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

GRAND JURY:
JURIES-JURORS:
PUBLIC RECORDS:
RECORDS:
SUNSHINE LAW:

The circuit clerk, prosecuting attorney and circuit judge are not required to release to the media and public the names of members of a grand jury.

March 19, 1990

OPINION NO. 78-90

The Honorable Mark A. Youngdahl
Representative, District 9
State Capitol Building, Room 410A
Jefferson City, Missouri 65101

Dear Representative Youngdahl:

This opinion is in response to your question asking:

> May the Circuit Clerk, Prosecuting Attorney and Circuit Judge of a county having a population of less than 75,000 keep secret the identity of the members of a grand jury [convened] in accordance with Sec. 540.020, RSMo 1986 and therefore, refuse to release the names of such jurors to the media and public?

You provided the following statement of facts as being relevant to your opinion request:

> On December 19, 1989, the Circuit Judge of Livingston County convened a grand jury. That grand jury returned indictments on December 27, 1989. A representative of the St. Joseph News-Press/Gazette requested the identity of the grand jurors from the Livingston County Prosecuting Attorney on Thursday, December 29, 1989, and from the Circuit Clerk on January 9, 1990; and from the Circuit Judge on January 5, 1990. The prosecuting attorney and the circuit clerk both refused to provide the names; the circuit judge said he would give it consideration if a letter was submitted to him by the newspaper requesting the information.

We understand the circuit judge, following consideration of a letter submitted to him by the newspaper, also refused to disclose the names.

The institution of the grand jury dates back many centuries. Conway v. Quinn, 168 S.W.2d 445, 446 (St. L. Ct. App. 1942). In Missouri, a grand jury is convened in accordance with the provisions of Chapter 540, RSMo. This chapter was amended extensively by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bills Nos. 127, 72, 161, 171, 275 & 120, 85th General Assembly, First Regular Session (1989).

Section 540.021, RSMo Supp. 1989, provides in subsections 4 and 5 that the grand jury is under the control of the circuit court and may be convened by the presiding judge of the circuit court:

> 540.021.--Selection of grand jurors, summons and jury qualification form--notification of persons not qualified to serve--alternate grand jurors--length of service--compensation.--
>
> * * *
>
> 4. Those persons summoned for grand jury service shall be placed under the control and supervision of the presiding judge of the circuit court, or a judge designated by the presiding judge, who shall select twelve persons to serve as grand jurors. Alternate grand jurors as determined by the judge shall also be selected, to serve as a grand juror upon the death, disqualification, or inability of one of the persons selected as a regular grand juror. The names of those persons selected as grand jurors and alternate grand jurors shall be deleted from the grand jury list.
>
> 5. The presiding judge of the circuit court, or a judge designated by the presiding judge, shall have the authority to convene, recess, and adjourn a grand jury as, in his discretion, he deems necessary, and at times and places as he specifies. No grand jury shall be required

> to serve for longer than a six-month period, except such term may be extended for a period not to exceed sixty days, solely for the purpose of considering and completing matters already before the grand jury. No new matters shall be presented to the grand jury during its extended service. Nothing contained in this section prevents the convening of another grand jury during such extended service.
>
> * * *

Every grand juror is required to swear an oath to keep secret his own counsel and the counsel of the state and the other jurors. Section 540.080, RSMo Supp. 1989. Grand jurors are prohibited from disclosing evidence given before the grand jury; the names of witnesses appearing before the grand jury; or the fact of any indictment prior to the defendant being arrested thereon. Section 540.320, RSMo Supp. 1989.

Testimony before a grand jury is recorded by an official reporter of the circuit court when so directed by the judge. However, the reporter is also required to swear an oath to keep secret the proceedings and testimony and the names of any witnesses. Section 540.105, RSMo Supp. 1989.

> "'The rule of secrecy concerning matters transpiring in the grand jury room, it has been said, is not designed for the protection of witnesses before the grand jury, but for that of the grand jurors, and in furtherance of the public justice.' 24 Am. Jur. 866, § 49."

Conway v. Quinn, supra, 168 S.W.2d at 447.

Chapter 540, RSMo, contains no specific references to whether the names of grand jurors may be disclosed. Two provisions of law pertain to the right of access to public records.

Chapter 610, RSMo, known as the "Sunshine Law," provides in Section 610.023, RSMo Supp. 1989, that "[e]ach public governmental body shall make available for inspection and copying by the public of that body's public records." However, a grand jury, convened by the court, is a part of the court, State ex rel. Hall v. Burney, 84 S.W.2d 659, 664 (K.C. Ct. App. 1935), and, therefore, is not a public governmental body as

defined by Section 610.010, RSMo Supp. 1989. See Remington v. City of Boonville, 701 S.W.2d 804, 807 (Mo. App. 1985).

Section 109.180, RSMo 1986, provides:

> 109.180. Public records open to inspection --refusal to permit inspection, penalty.--Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen. . . . [Emphasis added.]

There is no provision in Chapter 540, RSMo, requiring the keeping of a list of the members of a grand jury. In fact, once persons are selected as grand jurors, their names are to be deleted from the list of prospective grand jurors, Section 540.021.4, RSMo Supp. 1989. Therefore, Section 109.180, RSMo 1986, does not apply to the names of grand jurors.

CONCLUSION

It is the opinion of this office that the circuit clerk, prosecuting attorney and circuit judge are not required to release to the media and public the names of members of a grand jury.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

AMBULANCE DISTRICTS:
CANDIDATES:
ELECTION OF DIRECTORS:
ELECTIONS:

Pursuant to Section 190.050.1, RSMo Supp. 1989, if only one candidate files for the office of ambulance district director in an election district, the ambulance district may forego the holding of an election in that election district.

May 11, 1990

OPINION NO. 80-90

William J. Hannah
St. Charles County Prosecuting Attorney
118 North Main Street
St. Charles, Missouri 63301

Dear Mr. Hannah:

This opinion is in response to your questions asking:

> If only one candidate files for office of director in an election district, may an ambulance district forego the holding of an election in that election district? Does Section 190.050.1 RSMo (1986) control the election of directors despite language in Section 115.005 RSMo (1986) which ". . . shall apply to all public elections in the state. . . ."?

We understand your questions relate to an ambulance district located in St. Charles County, a first class noncharter county.

Section 190.050.1, RSMo Supp. 1989, provides:

> 190.050. Election districts, how established--election of directors--declaration of candidacy filed, where, when.--1. After the ambulance district has been declared organized, the declaring county commission, except in counties of the second class having more than one hundred five thousand inhabitants located adjacent to a county of the first class having a charter form of government which

> does not contain any part of a city of over four hundred fifty thousand inhabitants, shall divide the district into six election districts as equal in population as possible, and shall by lot number the districts from one to six inclusive. The county commission shall cause an election to be held in the ambulance district within ninety days after the order establishing the ambulance district to elect ambulance district directors. Each voter shall vote for one director from the ambulance election district in which the voter resides. The directors elected from districts one and four shall serve for a term of one year, the directors elected from districts two and five shall serve for a term of two years, and the directors from districts three and six shall serve for a term of three years; thereafter, the terms of all directors shall be three years. All directors shall serve the term to which they were elected or appointed, and until their successors are elected and qualified, except in cases of resignation or disqualification. The county commission shall reapportion the ambulance districts within sixty days after the population of the county is reported to the governor for each decennial census of the United States. Notwithstanding any other provision of law, if the number of candidates for the office of director is no greater than the number of directors to be elected, no election shall be held, and the candidates shall assume the responsibilities of their offices at the same time and in the same manner as if they have been elected. [Emphasis added.]

* * *

The sentence in Section 190.050.1 which is highlighted above by underlining was added in 1986. See Laws of Missouri, 1986, page 695.

Section 115.005, RSMo 1986, to which you refer in your questions, provides:

> 115.005. Scope of act.--
> Notwithstanding any other provision of law to the contrary, sections 115.001 to 115.641 shall apply to all public elections in the state, except elections for which ownership of real property is required by law for voting.

This section and the sections referred to therein were enacted in 1977 as the "Comprehensive Election Act of 1977." See Laws of Missouri, 1977, page 207. Certain provisions in Chapter 115, RSMo, have been amended subsequent to 1977; however, Section 115.005 has not been amended since 1978. See Laws of Missouri, 1978, page 315.

Ascertainment of legislative intent is the primary goal of statutory construction. O'Flaherty v. State Tax Commission of Missouri, 680 S.W.2d 153, 155 (Mo. banc 1984). Where one statute deals with a particular subject in a general way and a second statute treats part of the same subject in a more detailed way, the more general should give way to the more specific. O'Flaherty v. State Tax Commission of Missouri, supra at 154; Bartley v. Special School District of St. Louis County, 649 S.W.2d 864, 867 (Mo. banc 1983). In addition, if the legislature enacts two laws which are so inimical to each other that both cannot stand, the later statute in point of time controls. Klingensmith v. Missouri Department of Consumer Affairs, Regulation and Licensing, 693 S.W.2d 226, 230 (Mo. App. 1985).

In the situation about which you are concerned, Section 190.050 deals specifically with elections in ambulance districts. The provision in Section 190.050.1 highlighted above by underlining was added in 1986. Chapter 115 deals with elections in a general way and Section 115.005 which provides provisions in Chapter 115 apply to all public elections was last amended in 1978. Based on the rules of statutory construction set forth above, we conclude the general provisions in Chapter 115 give way to the more specific provisions regarding ambulance district elections in Section 190.050.1. Therefore, if only one candidate files for the office of ambulance district director in an election district, the ambulance district may forego the holding of an election in that election district.

William J. Hannah

CONCLUSION

It is the opinion of this office that pursuant to Section 190.050.1, RSMo Supp. 1989, if only one candidate files for the office of ambulance district director in an election district, the ambulance district may forego the holding of an election in that election district.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

February 6, 1990

OPINION LETTER NO. 81-90

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Article I of the Missouri Constitution by adopting a new Section 32. A copy of the initiative petition which you submitted to this office on February 1, 1990, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. See Moore v. Brown, 165 S.W.2d 657 (Mo. banc 1942). Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure

CONFLICT OF INTEREST:
LEGISLATORS:
REPRESENTATIVES:
SCHOLARSHIPS:
STATE UNIVERSITIES:
UNIVERSITIES:

Article III, Section 12, of the Missouri Constitution does not prohibit a state representative from accepting student financial aid from a state university if no employment is required, but such section prohibits a state representative from accepting a graduate assistantship which requires employment.

May 30, 1990

OPINION NO. 87-90

The Honorable David C. Hale
Representative, District 77
State Capitol Building, Room 105
Jefferson City, Missouri 65101

Dear Representative Hale:

This opinion is in response to your questions concerning Article III, Section 12, of the Missouri Constitution. The questions you pose can be summarized as follows:

1. Does Article III, Section 12, of the Missouri Constitution prohibit a state representative from accepting student financial aid from a state university if no employment is required?

2. Does Article III, Section 12, of the Missouri Constitution prohibit a state representative from accepting a graduate assistantship at a state university which graduate assistantship requires employment?

Article III, Section 12, of the Missouri Constitution provides:

> Section 12. Members of general assembly disqualified from holding other offices. No person holding any lucrative office or employment under the United States, this state or any municipality thereof shall hold the office of senator or representative. When any senator or

> representative accepts any office or employment under the United States, this state or any municipality thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary as senator or representative. During the term for which he was elected no senator or representative shall accept any appointive office or employment under this state which is created or the emoluments of which are increased during such term. This section shall not apply to members of the organized militia, of the reserve corps and of school boards, and notaries public.

The first question posed is whether Article III, Section 12, prohibits a state representative from receiving student financial aid from a state university if no employment is required. Article III, Section 12, only prohibits members of the General Assembly from holding an office or being employed "under the United States, this state or any municipality thereof." Merely attending a state university in no way constitutes holding an office or being employed--assuming that the financial aid (i.e. a grant) to which you refer is based on scholarship or need and is no way contingent upon any type of employment with the university or the acceptance of any office. If these assumptions are correct, receiving student financial aid from a university and attending that university in no way constitutes employment or the holding of an office as contemplated by Article III, Section 12, of the Missouri Constitution. Therefore, Article III, Section 12, does not prohibit a state representative from accepting student financial aid from a state university if no employment is required.

In regard to your second question dealing with whether a state representative is prohibited by Article III, Section 12, from taking a graduate assistantship which requires employment, a similar question was considered in Missouri Attorney General Opinion No. 412, Grellner, 1966, a copy of which is enclosed. In that opinion it was concluded that "[s]ince employment with the state university is juridically and financially created and maintained by the state, we are of the opinion that teachers and other employees of the state university hold an 'employment under . . . this state' within the meaning of Article III, Section 12, of the State Constitution." Id. at page 2. Since a graduate assistant would be an employee of the university, a state representative would be barred by Article III, Section 12, of the Missouri Constitution from holding that position.

The Honorable David C. Hale

CONCLUSION

It is the opinion of this office that Article III, Section 12, of the Missouri Constitution does not prohibit a state representative from accepting student financial aid from a state university if no employment is required, but such section prohibits a state representative from accepting a graduate assistantship which requires employment.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure:
Opinion No. 412, Grellner, 1966

ATTORNEYS:
CONFLICT OF INTEREST:
COUNTIES:
NEPOTISM:
PUBLIC ADMINISTRATOR:

(1) It would be a violation of Article VII, Section 6 of the Missouri Constitution, the nepotism provision, for the Ray County Public Administrator to retain in her official capacity her brother-in-law who is an attorney, and (2) it would not be a violation of Article VII, Section 6 of the Missouri Constitution or Sections 105.450 et seq., RSMo, for the public administrator to contract with an abstract corporation whose stock is wholly owned by her brother-in-law.

September 17, 1990

OPINION NO. 88-90

Stanley M. Thompson
Ray County Prosecuting Attorney
Post Office Box 535
Richmond, Missouri 64085

Dear Mr. Thompson:

This opinion is in response to your questions asking:

> A. May the Public Administrator of Ray County, Missouri, retain the legal services of her brother-in-law, who is a licensed attorney, to represent the estates and file various legal documents with the Courts, in her official capacity as Public Administrator without violating the nepotism provision of Art. 7, § 6, Mo. Const. and thereby being subject to forfeiture of office?
>
> B. May the Public Administrator of Ray County, Missouri, contract for Title Insurance, Abstracting, and related services with an abstract corporation whose stock is wholly owned by her brother-in-law, with respect to property of estates that she administers as Public Administrator without violating the nepotism provision of Art. 7, § 6, Mo. Const. and thereby being subject to forfeiture of office?

> C. Would either of the circumstances related in A. and B. above violate the conflict of interest statutes, RSMo., §§ 105.450 et seq.?

Article VII, Section 6, of the Missouri Constitution provides:

> Section 6. Penalty for nepotism. Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment.

The Missouri Constitution, Article VII, Section 6, prohibits with the penalty of forfeiture of office, any public officer from appointing a relative within the degree named to public office or employment. The public administrator is a public officer within the meaning of the provision. Likewise, a brother-in-law is within the prohibited degree of relationship. The issue is whether the hiring of a brother-in-law as an attorney would constitute "public office or employment."

When interpreting the Constitution, the rules "employed in construction of constitutional provisions are the same as those employed in construction of statutes, but the former are to be given a broader construction due to their more permanent character. . . . This court has recognized that in construction of constitutional provisions, it should undertake to ascribe to words the meaning which the people understood them to have when they adopted the provision. . . . Of course, this Court must give due regard to the primary objectives of the provision under scrutiny as viewed in harmony with all related provisions considered as a whole." Roberts v. McNary, 636 S.W.2d 332, 335 (Mo. banc 1982).

The term "employment" is subject to a variety of legal interpretations depending upon the context in which it arises. Since the purpose of Article VII, Section 6 is undoubtedly to prevent nepotism, a broad interpretation of the word "employment" is called for when construing that section. We conclude "employment" would encompass the retention of an attorney by the public administrator in her official capacity. The term "employment" is used with reference to the attorney-client relationship in Missouri Supreme Court Rule IV. See Rules 1.5(a)(2); 1.11(c)(1) and (2); 1.12(b); and 7.3(a)

and (b). Moreover, the probate code speaks of a public administrator "employing" an attorney. Section 473.155.4, RSMo Supp. 1989, states:

> 4. Nothing in subsection 2 of this section shall apply to attorneys employed by any duly elected public administrator who is an attorney. [Emphasis added.]

See also Missouri Attorney General Opinion No. 13-87, a copy of which is enclosed, wherein this office concludes an attorney's representation of Bi-State Development Agency in defense of claims against it and in regard to other legal matters constituted "employment." Therefore, we conclude it would be a violation of Article VII, Section 6 of the Missouri Constitution for the Ray County Public Administrator to retain in her official capacity her brother-in-law who is an attorney.

The next issue for consideration is whether the public administrator may contract for title insurance, abstracting and related services with an abstract corporation whose stock is wholly owned by her brother-in-law. The public administrator may contract with the abstract corporation, regardless of her brother-in-law's ownership, without running afoul of Article VII, Section 6. Article VII, Section 6 forbids the hiring of a relative within the fourth degree by consanguinity or affinity. The corporation is not a "relative" of the public administrator. See also Missouri Attorney General Opinion Letter No. 92, Hyler, 1963, a copy of which is enclosed.

With respect to your question concerning contracting with the abstract corporation, we also need to consider Sections 105.450 et seq., RSMo. These sections comprise the general conflict of interest law. Section 105.450, RSMo 1986, defines terms used in the conflict of interest law. Subsection 3 of Section 105.450 defines "business with which he is associated" as:

> 105.450. Definitions.--As used in sections 105.450 to 105.458, 105.462 to 105.468, and 105.472 to 105.482 unless the context clearly requires otherwise, the following terms mean:
>
> * * *
>
> (3) "Business with which he is associated", any sole proprietorship owned by himself or his spouse, any partnership

> or joint venture in which he or his spouse is a partner, any corporation in which he is an officer or director or of which either he or his spouse or dependent child in his custody whether singularly or collectively owns in excess of ten percent of the outstanding shares of any class of stock, or any trust in which he is a trustee or settlor or in which he or his spouse or dependent child whether singularly or collectively is a beneficiary or holder of a reversionary interest of ten percent or more of the corpus of the trust;
>
> * * *

A corporation whose stock is wholly owned by the brother-in-law of the public administrator is not a business with which the public administrator is associated for purposes of the conflict of interest law. Therefore, under the facts you have presented, the public administrator may contract with the abstract corporation whose stock is wholly owned by her brother-in-law without violating Sections 105.450 et seq., RSMo.

CONCLUSION

It is the opinion of this office that (1) it would be a violation of Article VII, Section 6 of the Missouri Constitution, the nepotism provision, for the Ray County Public Administrator to retain in her official capacity her brother-in-law who is an attorney, and (2) it would not be a violation of Article VII, Section 6 of the Missouri Constitution or Sections 105.450 et seq., RSMo, for the public administrator to contract with an abstract corporation whose stock is wholly owned by her brother-in-law.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

Enclosures:
Opinion No. 13-87
Opinion Letter No. 92, Hyler, 1963

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

March 22, 1990

OPINION LETTER NO. 90-90

The Honorable Dennis W. Smith
Senator, District 30
State Capitol Building, Room 426
Jefferson City, Missouri 65101

and

The Honorable B. J. Marsh
Representative, District 136
State Capitol Building, Room 103BC
Jefferson City, Missouri 65101

and

The Honorable Joe McCracken
Representative, District 139
State Capitol Building, Room 114B
Jefferson City, Missouri 65101

Gentlemen:

Each of you has requested an opinion in response to a question concerning Sections 67.638 to 67.645, RSMo Supp. 1989, which sections relate to a "Convention and Sports Complex Fund." Because of the similarity in the questions posed, we have combined your requests into one opinion letter. The question posed by Senator Smith and Representative Marsh is as follows:

> Do any provisions of Sections 67.638 to 67.645, R.S.Mo. (commonly called the "Convention and Sports Complex fund, certain cities and counties") prevent Southwest Missouri State University from contributing, pursuant to Section 67.641.3, to a sports complex fund established by the City of Springfield, where it is shown the City and SMSU will enter into a cooperative

> agreement to develop and operate a sports, convention, exhibition, and trade facility?

The question posed by Representative McCracken is as follows:

> Does "Southwest Missouri State University" in Springfield, have the authority to apply for state matching funds as authorized in the "Convention and Sports Complex fund, certain cities and counties" statute known as Chapter 67.638 to 67.645?

Sections 67.638 to 67.645, RSMo Supp. 1989, were enacted by the Missouri General Assembly in 1989 as part of House Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 295 & 312, 85th General Assembly, First Regular Session. Section 67.639 provides:

> 67.639. Convention and sports complex fund, certain cities and counties may establish, purpose.-- Each county and each city, as defined by section 67.638, is authorized to establish, by ordinance or order of the county or city governing body, a "Convention and Sports Complex Fund", for the purposes of developing, maintaining or operating within its jurisdiction, sports, convention, exhibition or trade facilities, which fund shall be separate from the general funds of such county or city, but which shall be subject to the provisions of the charter of such county or city.

Section 67.638 defines, among other terms, the terms "city," "convention and sports complex fund," and "county." Such terms are defined as follows:

> 67.638. Definitions.--As used in sections 67.638 to 67.645, the following terms mean:
>
> (1) "City", a city with a population of three hundred fifty thousand or more inhabitants, located wholly or partially within a first class county with a charter

form of government which does not adjoin a city not within a county or a charter city located in a first class county;

(2) "Convention and sports complex fund", the fund established by a county or city pursuant to the provisions of sections 67.638 to 67.645, for the purposes of developing, maintaining or operating within its jurisdiction, sports, convention, exhibition or trade facilities;

(3) "County", a first class county, other than a first class county with a charter form of government which adjoins a city not within a county;

* * *

Section 67.641 provides in part:

67.641. General assembly may make appropriations, conditions, limitations--matching funds required locally.--1. The general assembly may annually appropriate up to two million dollars from the state general revenue fund to each convention and sports complex fund created pursuant to section 67.639, provided . . . .

* * *

3. This section shall not become effective unless and until the applicable county or the applicable city which has created a convention and sports complex fund has commenced paying into the convention and sports complex fund amounts at a rate sufficient for the county or city to contribute the sum of two million dollars per calendar year, except that this section shall become effective with respect to any first class county not having a charter form of government and with respect to any charter city located in a first class county not having a charter form of

> government at the time at which such county or city has commenced paying any moneys into its convention and sports complex fund. The appropriations made pursuant to subsection 1 of this section to any convention and sports complex fund shall not exceed the amounts contributed by the county or city to the fund. The county or city's proportional amount specified in this section may come from any source. Once the county or city has commenced paying such appropriate proportional amounts into its convention and sports complex fund, the county or city shall so notify the state treasurer and the director of revenue and, thereafter, subject to annual appropriation, transfers shall commence and continue each month pursuant to this section until such monthly transfers are made for thirty years. Moneys appropriated from general revenue shall not be expended until such first class charter county or city located in such first class charter county has paid two million dollars into its fund, or until such first class county not having a charter form of government or until such charter city within a first class county not having a charter form of government has commenced payment of moneys into its fund. [Emphasis added.]

The question posed by Senator Smith and Representative Marsh and the additional information we have been provided indicate that the City of Springfield (hereinafter "the City") and Southwest Missouri State University (hereinafter "the University") contemplate entering into a cooperative agreement to develop and operate a sports, convention, exhibition and trade facility. We have not been provided a copy of any cooperative agreement between the City and the University and express no opinion regarding any such agreement.

The question posed by Senator Smith and Representative Marsh asks if any provisions of Sections 67.638 to 67.645 prevent the University from contributing to a sports complex fund established by the City. There is nothing in the specified sections which prevents the University from contributing to the

convention and sports complex fund established by the City. Subsection 3 of Section 67.641 specifically provides that: "The county or city's proportional amount specified in this section may come from any source." [Emphasis added.] However, as stated above, we have not reviewed any cooperative agreement between the University and the City and express no opinion regarding the obligations of the University pursuant to any such agreement.

The question posed by Representative McCracken inquires whether the University has the authority to apply for state matching funds as authorized in the specified sections. Section 67.639 provides that each county and each city, as defined by Section 67.638, is authorized to establish a "Convention and Sports Complex Fund." The University is not a "city" as defined in subsection 1 of Section 67.638 and is not a "county" as defined in subsection 3 of Section 67.638. Under Section 67.639 the University is not authorized to establish a "Convention and Sports Complex Fund." Therefore, the University, not being a "city" or "county," cannot directly receive appropriations as a "city" or "county" is authorized to receive under the specified sections. However, a county or city's proportional amount specified in Section 67.641 may come from any source. We again caution you that we have not reviewed any cooperative agreement so that we do not opine on the authority of the University by "cooperative agreement" to provide funds (appropriated to the University) to the City which funds the City may then use to meet the City's proportional amount specified in Section 67.641.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

July 24, 1990

OPINION LETTER NO. 92-90

Charles E. Kruse, Director
Missouri Department of Agriculture
P. O. Box 630
1616 Missouri Boulevard
Jefferson City, MO 65102

Dear Director Kruse:

This opinion letter is in response to your question asking:

> Whether existing law gives the Missouri Department of Agriculture or the State Entomologist the authority to regulate the movement of genetically engineered plants or plant products that have been altered by the use of an allegedly disarmed plant "pest," i.e., an organism that under normal circumstances would be injurious to plants or plant products but has been altered so as (1) to serve as a vectoring agent for the transmission of genetic material for the purpose of creating a more desirable plant or plant product and (2) not to be injurious to plants or plant products.

Subsection 1 of Section 263.080, RSMo 1986, provides:

> 263.080. Plant pests, control, noncomplying owner, action by inspectors--lien for expenses.--1. The state entomologist shall keep himself informed as to the occurrence of plant pests, their origin, locality, nature and appearance, the manner in which they are

> disseminated, and approved methods of treatment and control. The state entomologist shall determine which plant pests are of such a harmful nature that their introduction into or dissemination within the state should be prevented. Whenever an inspection discloses that the premises, plants, plant parts or pest-harboring materials are infested or infected with such harmful plant pests as to constitute a hazard to plant or animal life in the state, or any part thereof, he may notify the owner or person having charge of such premises to that effect and the owner or person in charge shall cause the treatment, removal or destruction of the infested or infected plants, or other pest-harboring material as directed and within the time specified by the notice. Whenever such owner or other person cannot be found or shall fail, neglect or refuse to comply with the terms of the notice, such requirements shall be carried out by the inspectors or other employees of the state entomologist and the state entomologist shall obtain and enforce a lien for the expense thereof against the place in or upon which such expense was incurred in the same manner as liens are obtained and enforced upon buildings for labor and materials furnished by virtue of contract with the owner.
>
> * * *

Section 263.020(9), RSMo 1986, defines plant pests as:

> 263.020. Definitions.--As used in sections 263.010 to 263.180 the following terms mean:
>
> * * *
>
> (9) "Plant pests", any insects, arthropods, nematodes, mollusks, invertebrates, fungi, bacteria, mycoplasmas, viruses, physiological disorders or parasitic weeds and other infectious agents which are injurious to

> plants or plant products and the pathological conditions in plants and plant products caused by these organisms;
>
> * * *

The first rule of statutory construction is to give effect to the intent of the legislature. State ex rel. Missouri State Board of Registration for Healing Arts v. Southworth, 704 S.W.2d 219, 224 (Mo. banc 1986); Collins v. Director of Revenue, 691 S.W.2d 246, 251 (Mo. banc 1985). Words used in a statute are to be considered in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988); Thomas v. Frazier, 626 S.W.2d 682, 684 (Mo. App. 1981).

Your particular question deals with whether or not the State Entomologist has the authority to regulate the movement of those plants transformed by insertion of a plant gene using a plant pest as the vectoring agent which has "allegedly" been "disarmed" in such a fashion it no longer is injurious to plants or plant products. The legislature has defined "plant pests" in a way which requires the "pest" be "injurious to plants or plant products and the pathological conditions in plants and plant products caused by these organisms." As noted in Section 263.080 "[t]he state entomologist shall determine which plant pests are of such a harmful nature that their introduction into or dissemination within the state should be prevented." [Emphasis added.] By the literal reading of the statutes, the State Entomologist has the authority to regulate a "plant pest" which has been found to be of "such a harmful nature that their introduction into or dissemination within the state should be prevented." Thus, the statutes do not authorize the State Entomologist to regulate those entities which have been found not to be "injurious to plants or plant products . . . ."

However, this does not preclude the State Entomologist from determining which "insects, arthropods, . . ." do pose a danger to plants or plant products. Section 263.040, RSMo 1986, authorizes the State Entomologist to promulgate certain rules. Such section provides:

> 263.040. Rules and regulations.-- The state entomologist shall, from time to time, make rules for carrying out the provisions and requirements of sections 263.010 to 263.180, including rules under which inspectors and other employees shall:

Charles E. Kruse, Director

(1) Inspect places, plants and plant products, and things and substances used or connected therewith;

(2) Investigate, control, eradicate and prevent the dissemination of plant pests; and

(3) Supervise or cause the treatment, cutting and destruction of plants and plant products infested or infected with plant pests.

Section 263.080 mandates the "state entomologist shall keep himself informed as to the occurrence of plant pests, their origin, locality, nature and appearance, the manner in which they are disseminated, and approved methods of treatment and control."

Under these sections, the State Entomologist has the authority to analyze and determine whether or not a particular entity not only is a plant pest but also whether or not the pest is "of such a harmful nature that [its] introduction into or dissemination within the state should be prevented." The fact that a "genetically engineered plant" has been transformed by insertion of a plant gene using a plant pest as the vectoring agent which has been "allegedly disarmed" would not preclude the State Entomologist from making a proper determination whether or not the entity is in fact a plant pest, and further whether or not it is of such a harmful nature that its introduction into or dissemination within the state should be prevented.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

MEETINGS:
NOTICES:
SUNSHINE LAW:

Pursuant to Section 610.022.2, RSMo Supp. 1989, notice of a closed meeting of a public governmental body must include the time, date and place of the meeting and a reference to the specific statutory exception allowing the meeting to be closed; however, notice of a closed meeting is not required to include a tentative agenda.

March 27, 1990

OPINION NO. 97-90

The Honorable Jan Martinette
Representative, District 47
State Capitol Building, Room 101
Jefferson City, Missouri 65101

Dear Representative Martinette:

This opinion is in response to your question asking:

> Must the notice of a closed meeting of the Mayor and Board of Aldermen as required by the Missouri Sunshine Law, RSMo § 610.022.2, include a tentative agenda of the closed meeting other than reference to the specific statutory exceptions contained in RSMo § 610.022.2 which can be the subject of a closed meeting?

In the statement of facts accompanying your question, you state:

> On Tuesday, January 23, 1990, at a regularly scheduled meeting of the Mayor and Board of Aldermen of the City of Grandview, the Board of Aldermen voted to meet in closed session on Tuesday, January 30, 1990, for the purpose of discussing the following items: (1) legal actions, causes of action or litigation, and any confidential or privileged communications between the City or its representatives and its attorneys; and (2) preparation of a public governmental body or its representatives for negotiations with employee groups. The minutes of the January 23, 1990, meeting of the Board of

> Aldermen reflect the roll call vote on the question of the closed session and recite the closed meeting discussion items. On Wednesday morning, January 24, 1990, a notice of the closed meeting to be conducted on Tuesday, January 30, 1990, at 6:30 p.m. was posted in City Hall on two bulletin boards and in an enclosed glass case, all accessible to the public during normal business hours. That notice recited the statutory exceptions permitting the closed meeting as follows: (1) legal actions, causes of action or litigation, and any confidential or privileged communications between the City or its representatives and its attorneys; and (6) preparation of a public governmental body or its representatives for negotiations with employee groups. (A copy of the Notice of Closed Meeting is attached hereto as Exhibit 1.) On Monday, January 29, 1990, City Administrator Bob Sisson was contacted by an attorney for The Kansas City Star. The attorney questioned the sufficiency of the Notice of Closed Meeting, and stated his position that any notice of a closed meeting must include a tentative agenda of the matters to be discussed at the closed meeting. . . .

Chapter 610, RSMo, was extensively amended in 1987. Pursuant to that amendment, the law requires a liberal construction in favor of openness. Section 610.011, RSMo Supp. 1989, provides in part: "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law." Section 610.021, RSMo Supp. 1989, lists fifteen specific exceptions which would authorize a public governmental body to close a meeting, record or vote.

Chapter 610, RSMo Supp. 1989, contains the following two provisions relating to notice of meetings:

> 610.020. Notice of meetings, when required.--1. All public governmental bodies shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that

> information. Reasonable notice shall include making available copies of the notice to any representative of the news media who requests notice of a particular meeting and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.
>
> 2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. . . .
>
> * * *
>
> 610.022. Closed meetings, procedure and limitation--public records presumed open unless exempt.--
>
> * * *
>
> 2. A public governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed under the provisions of section 610.021. Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.

Subsections 1 and 2 of Section 610.020 existed in their present form in 1986. However, prior to the 1987 amendment to Chapter 610, notice requirements for a closed meeting were set out in Section 610.025.5, RSMo 1986 (repealed) which provided in part: "Notice of the closed meeting, record, or vote shall also be given as provided in section 610.020."

In construing statutes to ascertain legislative intent, it is recognized that "in amending a statute or in enacting a new one on the same subject, it is ordinarily the intent of the legislature to effect some change in the existing law." Kilbane v. Director of Department of Revenue, 544 S.W.2d 9, 11 (Mo. banc 1976). Therefore, if the notice requirements for open meetings and closed meetings were to be identical, there would have been no reason to amend the notice provisions for closed meetings.

Section 610.020, RSMo Supp. 1989, establishes requirements for notice for "each meeting" of a public governmental body. Section 610.022.2 provides requirements for notice of a "closed meeting." Where an apparent conflict exists among statutes relating to the same subject, they are to be harmonized to give meaning to all provisions of each. State ex rel. Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985). As stated in Laughlin v. Forgrave, 432 S.W.2d 308, 313 (Mo. banc 1968):

> Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute.

In construing these statutes together, the specific provisions for notice of a proposed closed meeting require the notice to include the time, date and place of the meeting and a reference to the specific statutory exception allowing the meeting to be closed, as required by Section 610.022.2, RSMo Supp. 1989. Further, the notice must "comply with the procedures set forth in section 610.020," the general requirement for notice of a public meeting. These procedures include making notice available to representatives of the news media upon request; posting the notice prominently in a place accessible to the public at the principal office of the body holding the meeting or, if no such office exists, at the place of the meeting; and posting notice at least twenty-four hours prior to the meeting. The "tentative agenda" requirement of Section 610.020, RSMo Supp. 1989, is a matter of content of a notice of an open meeting, not a procedure for notice of a meeting.

This conclusion is consistent with the public policy stated in Section 610.011, RSMo Supp. 1989. All meetings are open to the public unless otherwise provided by law. The legislature has listed fifteen statutory exceptions where the public interest may require that business be discussed in a closed meeting. Notice of a closed meeting must reference the specific statutory exception allowing the meeting to be closed. However, to require also an agenda of the closed meeting would defeat the protections intended by closure.

CONCLUSION

It is the opinion of this office that pursuant to Section 610.022.2, RSMo Supp. 1989, notice of a closed meeting of a public governmental body must include the time, date and place of the meeting and a reference to the specific statutory exception allowing the meeting to be closed; however, notice of a closed meeting is not required to include a tentative agenda.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

February 23, 1990

OPINION LETTER NO. 99-90

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall Article I of the Constitution of Missouri be Amended by adding a new section to prohibit any governmental or statutory restriction of a female's use of contraception or her decision to continue or terminate a pregnancy; and to repeal House Bill 1596 (Regulation of Abortions) as passed by the 83rd General Assembly; and to nullify laws inconsistent with this section except for those state laws in effect on August 13, 1986 provided those laws are not hereafter amended or repealed?

See our Opinion Letter No. 81-90.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CORPORATION STOCK:
CORPORATIONS:
STOCK-CORPORATE:
STOCKHOLDERS:

Under Section 351.405, RSMo 1986, a dissenting shareholder is not entitled to receive dividends, whether the dividends are regularly scheduled or extraordinary, that are declared after the date on which the vote was taken authorizing the sale or exchange.

March 19, 1990

OPINION NO. 107-90

The Honorable Henry A. Panethiere
Senator, District 11
State Capitol Building, Room 221
Jefferson City, Missouri 65101

Dear Senator Panethiere:

This opinion is in response to your question asking:

> Under § 351.405 of The General and Business Corporation Law of Missouri, a shareholder of a Missouri corporation who dissents to the sale by the corporation of substantially all of its assets has the right to have his shares of stock purchased by the corporation at their "fair value." The "fair value" of the shares is determined as of the day before the day the shareholder vote that authorizes the sale is taken.
>
> R.S.Mo. §§ 351.405.2 and 351.405.3 provide that a dissenting shareholder ceases to have any interest in his shares or in the corporation on the day he receives payment for the shares (which may be several weeks or months after the sale of the assets has occurred). The shareholder is also, under R.S.Mo. § 351.405.3, entitled to interest on the amount of such fair value from the day before the day the shareholder vote was taken.
>
> If the corporation declares a dividend and the dividend is payable to shareholders

> of record as of the day after the date of the [shareholder vote authorizing the] sale, is a dissenting shareholder entitled, under Missouri law, to receive the dividend? In other words, does Section 351.405 mean that a dissenting shareholder has all rights of a shareholder until he is paid in full, including the right to receive dividends, or does it mean that all his rights as a shareholder, except the right to receive the fair value of his shares and interest thereon, cease upon the date the shareholder vote is taken?
>
> Also, does it make a difference whether the dividend is a regularly scheduled dividend or a extraordinary dividend that is payable out of the proceeds of the sale of the assets?

Section 351.405, RSMo 1986, to which you refer in your question, provides in part:

> 351.405. Rights of dissenting shareholder--sale or exchange of assets.--1. In the event that a sale or exchange of all or substantially all of the property and assets of a corporation, otherwise than in the usual and regular course of its business, is authorized by a vote of the shareholders of the corporation, except as provided in subsection 6 of this section, any shareholder who shall not have voted in favor thereof and who at or prior to the meeting at which said sale or exchange is submitted to a vote shall file with the corporation written objection thereto may, within twenty days after the vote was taken make written demand on the corporation <u>for the payment to him of the fair value of his shares as of the day prior to the date on which the vote was taken authorizing the sale or exchange</u>. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty-day period shall be conclusively presumed to have consented to the sale or

exchange and shall be bound by the terms thereof.

2. If, within thirty days after the date on which such vote was taken, the value of such shares is agreed upon between the dissenting shareholder and the corporation, the corporation shall make payment of the agreed value within ninety days after the date on which the vote was taken authorizing the sale or exchange, upon the surrender of his certificate or certificates representing said shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

3. If within such period of thirty days the shareholder and the corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the county in which the registered office of the corporation is situated asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the corporation for the amount of such fair value as of the day prior to the date on which such vote was taken together with interest thereon to the date of such judgment. The judgment shall be payable only upon and simultaneously with the surrender to the corporation of the certificate or certificates representing said shares. Upon the payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares or in the corporation. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the sale or exchange and shall be bound by the terms thereof. [Emphasis added.]

* * *

The issue posed by your question concerns a dividend, whether it be a regularly scheduled dividend or an extraordinary dividend, declared after the date on which the vote was taken authorizing the sale or exchange. Under subsection 1 of Section 351.405, the dissenting shareholder is to receive "the fair value of his shares as of the day prior to the date on which the vote was taken authorizing the sale or exchange." However, under subsections 2 and 3 of Section 351.405, it is not until payment to the dissenting shareholder that "the dissenting shareholder shall cease to have any interest in such shares or in the corporation." The issue is whether the dissenting shareholder is entitled to such a dividend.

The first rule of statutory construction is to give effect to the intent of the legislature. State ex rel. Missouri State Board of Registration for Healing Arts. v. Southworth, 704 S.W.2d 219, 224 (Mo. banc 1986). In discussing the legislative intent underlying Section 351.405, the Missouri Court of Appeals stated: "Rather, the underlying purpose is to assure such dissenting minority shareholders an equitable, just and 'fair value' for their stock in the event of a sale of the corporate assets." Dreiseszun v. FLM Industries, Inc., 577 S.W.2d 902, 907 (Mo. App. 1979). Under the statute, the fair value of the shares is determined as of the day prior to the date on which the vote was taken authorizing the sale or exchange. Under subsection 3 of Section 351.405, the dissenting shareholder is entitled to interest on the fair value to the date of the judgment referred to in that section. To interpret the statute to allow a dissenting shareholder to receive a dividend, whether it be a regularly scheduled dividend or an extraordinary dividend, in addition to the "fair value" of his shares would be inconsistent with the dissenting shareholder receiving the "fair value" of his shares. The dissenting shareholder would receive in excess of the "fair value" of his shares. In construing statutes, the courts presume that the legislature intends a logical result, not an absurd or unreasonable result. State ex rel. Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985). Furthermore, in discussing Section 351.405, the Missouri Supreme Court stated: "The clear intention of § 351.405 is to change the status of a dissenting shareholder to that of a creditor at least superior to the distributive rights of the remaining shareholders." Flarsheim v. Twenty Five Thirty Two Broadway Corporation, 432 S.W.2d 245, 253 (Mo. 1968). Therefore, we conclude that a dissenting shareholder is not entitled to receive dividends, whether the dividends are regularly scheduled or extraordinary, that are declared after the date on which the vote was taken authorizing the sale or exchange.

CONCLUSION

It is the opinion of this office that under Section 351.405, RSMo 1986, a dissenting shareholder is not entitled to receive dividends, whether the dividends are regularly scheduled or extraordinary, that are declared after the date on which the vote was taken authorizing the sale or exchange.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CRIMES:
CRIMINAL LAW:
DEPARTMENT OF CORRECTIONS:
HANCOCK AMENDMENT:
PROSECUTING ATTORNEY:

Prosecution by the Dekalb County Prosecuting Attorney of correctional facility inmates who violate Missouri criminal statutes does not involve a new or increased activity or service for which state funds must be appropriated under Article X, Section 21, of the Missouri Constitution.

July 26, 1990

OPINION NO. 108-90

The Honorable Bob F. Griffin
Representative, District 10
State Capitol Building, Room 308-A
Jefferson City, Missouri 65101

and

The Honorable Phil Tate
Representative, District 4
State Capitol Building, Room 130-DA
Jefferson City, Missouri 65101

Dear Representative Griffin and Representative Tate:

This opinion is in response to your question asking:

> Whether prosecuting inmates who violate statutes involves an increased activity which the state must appropriate funds for, when such prosecutions were not previously required because the corrections facility housing these inmates was not previously in the county the inmates are to be prosecuted in?

In your opinion request you state the Dekalb County Prosecuting Attorney has received six reports of violations of Section 217.360 or Section 217.385, RSMo, by inmates of the Western Missouri Correctional Facility in Dekalb County. The prosecuting attorney refuses to prosecute these violations because the correctional facility was built after enactment of Article X, Section 21, of the Missouri Constitution.

The Honorable Bob F. Griffin
The Honorable Phil Tate

Article X, Section 21, of the Missouri Constitution, which was adopted as part of what is commonly referred to as the Hancock Amendment, provides:

> Section 21. State support to local governments not to be reduced, additional activities and services not to be imposed without full state funding. The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

Section 217.360, RSMo Supp. 1989, provides:

> 217.360. Delivery or concealment on premises of narcotics, liquor, or prohibited articles, penalties.--1. It shall be an offense for any person to knowingly deliver, attempt to deliver, have in his possession, deposit or conceal in or about the premises of any correctional facility;
>
> (1) Any controlled substance as that term is defined by law, except upon the written prescription of a licensed physician, dentist, or veterinarian;
>
> (2) Any other alkaloid of any kind, any spiritous or malt liquor, or any intoxicating liquor as defined in section 311.020, RSMo;
>
> (3) Any article or item of personal property which an offender is prohibited by law or by rule and regulation of the division from receiving or possessing;

> (4) Any gun, knife, weapon, or other article or item of personal property that may be used in such manner as to endanger the safety or security of the correctional facility or as to endanger the life or limb of any offender or employee of such a facility.
>
> 2. The violation of subdivision (1) of subsection 1 of this section shall be a class C felony; the violation of subdivision (2) of subsection 1 of this section shall be a class D felony; the violation of subdivision (3) of subsection 1 of this section shall be a class A misdemeanor; and the violation of subdivision (4) of subsection 1 of this section shall be a class B felony.

Section 217.385, RSMo Supp. 1989, provides:

> 217.385. Violence or injury to others or property by offender, penalty.--No offender shall commit or offer to commit violence to an employee of the department or to another offender housed in a department correctional facility, or attempt to do injury to any building or other property. Violation of this section shall be a class C felony.

Because this question involves the constitution, rules of constitutional construction must be applied. "Rules applicable to constitutional construction are the same as those applied to statutory construction, except that the former are given a broader construction, due to their more permanent character." Boone County Court v. State of Missouri, 631 S.W.2d 321, 324 (Mo. banc 1982). As in statutory construction, words are considered in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). In determining whether the language is clear and unambiguous, the standard is whether the statute's terms are plain and clear to one of ordinary intelligence. Id.

A violation of Article X, Section 21 may exist if "(1) a new or increased activity or service is required of a political subdivision by the State; and (2) a political subdivision experiences increased costs in performing that activity or service." Missouri Municipal League v. Brunner, 740 S.W.2d 957,

958 (Mo. banc 1987). The question presented does not involve a state-imposed new or increased activity or service of a political subdivision. Prosecution of inmate violations of Missouri criminal statutes is not a state-imposed new or increased activity or service of the Dekalb County Prosecuting Attorney but is the result of an increase in crime.

CONCLUSION

It is the opinion of this office that prosecution by the Dekalb County Prosecuting Attorney of correctional facility inmates who violate Missouri criminal statutes does not involve a new or increased activity or service for which state funds must be appropriated under Article X, Section 21, of the Missouri Constitution.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

MENTAL HEALTH, DEPARTMENT OF:
STATE LEGAL EXPENSE FUND:

The trustees of the Missouri Family Trust Fund are entitled to coverage by the State Legal Expense Fund as provided in Section 105.711, RSMo Supp. 1989.

June 29, 1990

OPINION NO. 112-90

Keith Schafer, Ed.D., Director
Department of Mental Health
1915 Southridge
P.O. Box 687
Jefferson City, MO 65102

Dear Dr. Schafer:

This opinion is in response to your question asking:

> Are duly appointed trustees of the Family Trust Fund, which instrumentally is set out in the attached legislation, covered under the provisions of the Legal Expense Fund?

The legislation which you attached to your opinion request is Senate Committee Substitute for House Bill No. 318, 85th General Assembly, First Regular Session (1989). The provisions of that bill are now Sections 402.200 through 402.225, RSMo Supp. 1989.

In designating those entitled to coverage under the State Legal Expense Fund, Section 105.711, RSMo Supp. 1989, provides in part:

> 105.711. Legal expense fund created--officers, employees, agencies, certain physicians covered, procedure--certain claims, limitations--funds not transferable to general revenue.--1. There is hereby created a "State Legal Expense Fund" which shall consist of moneys appropriated to the fund by the general assembly and moneys otherwise credited to such fund pursuant to section 105.716.

> 2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:
>
> (1) The state of Missouri, or any agency of the state, pursuant to section 537.600, RSMo; or
>
> (2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo; or [Emphasis added.]
>
> * * *

Section 402.210.1, RSMo Supp. 1989, relating to the Missouri Family Trust Fund, provides in part:

> 402.210. Board of trustees--members, appointment, term, qualifications, expenses--"immediate family" defined.--1. There is hereby created the "Missouri Family Trust Board of Trustees". The board of trustees shall consist of nine persons appointed by the governor with the advice and consent of the senate. The members' terms of office shall be three years and until their successors are appointed and qualified. The trustees shall be persons who are not prohibited from serving by sections 105.450 to 105.482, RSMo, and who are not otherwise employed by the department of mental health. The board of trustees shall be composed of the following: [Emphasis added.]
>
> * * *

Keith Schafer, Ed.D., Director

Section 402.215, RSMo Supp. 1989, provides in part:

> 402.215. Board of trustees, duties--provisions for trust documents.--1. The board of trustees is authorized and directed to establish and administer the Missouri family trust. The board shall be authorized to execute all documents necessary to establish and administer the trust including the formation of a not for profit corporation created pursuant to chapter 355, RSMo, and to qualify as an organization pursuant to section 501(c)(3) of the United States Internal Revenue Code.
>
> 2. The trust documents shall include and be limited by the following provisions:
>
> (1) The Missouri family trust fund shall be authorized to accept contributions from any source, other than the life beneficiaries and their respective spouses, to be held, administered, managed, invested and distributed in order to facilitate the coordination and integration of private financing for individuals who have a handicap or are eligible for services provided by the Missouri department of mental health, or both, while maintaining the eligibility of such individuals for government entitlement funding. All contributions, and the earnings thereon, shall be administered as one trust fund; however, separate accounts shall be established for each designated beneficiary. The income earned, after deducting administrative expenses, shall be credited to the accounts of the respective life beneficiaries, in proportion to the amount of the contribution made for each such life beneficiary, reduced from time to time by any distributions or encroachments, to the total contributions, reduced from time to time by any distributions or encroachments, made for all life beneficiaries.

* * *

Keith Schafer, Ed.D., Director

We conclude that the trustees of the Missouri Family Trust Fund are "appointees" entitled to coverage by the State Legal Expense Fund as provided in Section 105.711.2(2), RSMo Supp. 1989. Section 402.210, RSMo Supp. 1989, specifically provides for appointment of a trustee upon "appointment by the governor with the advice and consent of the senate." It is also evident that the scope of Sections 402.200 through 402.225, RSMo Supp. 1989, reaches statewide, and is aimed at assisting those individuals receiving services from your department. There exists a close relationship between the Missouri Family Trust Fund and your department. Sections 402.200 through 402.225, RSMo Supp. 1989, give the trustees specific duties relating directly to the facilitation of private funding in line and consistent with government entitlement for those individuals eligible to receive services from your department. This close relationship between the activities of the trustees and the mission of your department is another factor which we believe indicates that the trustees as appointees are those types of appointees envisioned by Section 105.711.2(2), RSMo Supp. 1989.

CONCLUSION

It is the opinion of this office that the trustees of the Missouri Family Trust Fund are entitled to coverage by the State Legal Expense Fund as provided in Section 105.711, RSMo Supp. 1989.

Yours very truly,



WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

May 11, 1990

OPINION LETTER NO. 121-90

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Article III of the Missouri Constitution. A copy of the initiative petition and the proposed amendment which you submitted to this office on May 9, 1990, are attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. See Moore v. Brown, 165 S.W.2d 657 (Mo. banc 1942). Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

May 11, 1990

OPINION LETTER NO. 122-90

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall Article III of the Constitution of Missouri be amended to create a "State Ethics Commission" which will regulate lobbyists, require financial disclosure from certain elected and appointed officials, investigate conflicts of interest, impose penalties, and prohibit state officials from using public office for personal financial gain; and to amend the Constitution to prohibit increases in officeholders' compensation by legislation involving other subjects; to reduce the size of the House of Representatives to one hundred three members in the year 2003; to require open meetings and recorded votes of the General Assembly's committees; and to shorten General Assembly sessions?

See our Opinion Letter No. 121-90.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

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WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

December 11, 1990

OPINION LETTER NO. 128-90

The Honorable John F. Bass
Senator, District 4
State Capitol Building, Room 220
Jefferson City, Missouri 65101

Dear Senator Bass:

This opinion letter is in response to your question asking:

> Is the St. Louis Housing Authority subject to the state purchasing requirements of Chapter 34, RSMo?

In your request for an opinion you state:

> The St. Louis Housing Authority is a municipal corporation created pursuant to Chapter 99, RSMo [1986] for the purpose of providing low income and moderate income housing to residents of the City of St. Louis. The St. Louis Housing Authority is totally funded by rental income received from its property and federal funds through the U. S. Department of Housing and Urban Development. No general revenue funds for the State of Missouri are currently appropriated to fund the St. Louis Housing Authority's on-going operations.

We assume the St. Louis Housing Authority does not have a cooperative agreement with the State Division of Purchasing or other state agencies pursuant to the State-Local Technical Services Act, Sections 67.330 to 67.390, RSMo 1986.

Chapter 34, RSMo, contains the Missouri Purchasing Law. Section 34.030, RSMo 1986, provides as follows:

> 34.030. Shall purchase all supplies and lands.--The commissioner of administration shall purchase all supplies for all departments of the state, except as in this chapter otherwise provided. The commissioner of administration shall negotiate all leases and purchase all lands, except for such departments as derive their power to acquire lands from the constitution of the state. [Emphasis added.]

Section 34.010.2, RSMo 1986, provides the following definition:

> 2. The term "department" as used in this chapter shall be deemed to mean department, office, board, commission, bureau, institution, or any other agency of the state, except the legislative and judicial departments.

Section 99.040, RSMo 1986, provides for the creation of housing authorities as follows, in pertinent part:

> 99.040. Creating a housing authority--need of, how determined.--1. In each city (as herein defined) and in each county of the state there is hereby created a municipal corporation to be known as "the housing authority" of the city or county; . . . .

* * *

The Missouri Supreme Court has concluded that the St. Louis Housing Authority, as a municipal corporation, is also a political subdivision of the state. State ex rel. St. Louis Housing Authority v. Gaertner, 695 S.W.2d 460, 462 (Mo. banc 1985); State ex rel. City of St. Louis v. Ryan, 776 S.W.2d 13, 16 (Mo. banc 1989).

The authority does not fall within the definition of "department" as provided in Section 34.010.2 since that definition does not include municipal corporations or political subdivisions of the state. In general, Chapter 34, RSMo, imposes certain duties upon the Commissioner of Administration with respect to purchases of goods or services for state departments and agencies. Certain provisions impose

requirements upon state departments and agencies with respect to cooperating with the Commissioner of Administration. The chapter as a whole does not apply to political subdivisions or municipal corporations, such as the St. Louis Housing Authority; however, certain sections expressly apply to political subdivisions. For example, Chapter 34, RSMo, specifically includes the term "political subdivision" in Sections 34.073 and 34.076, RSMo 1986, which allow or require a preference to be given to Missouri businesses under certain circumstances.

The term "political subdivision" also appears in new sections added pursuant to House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 808 and 672, 85th General Assembly, Second Regular Session (1990), which became effective August 28, 1990. This bill contains new provisions which will be codified as Sections 34.057 and 34.058, RSMo. Section 34.057.1, RSMo, as enacted by this bill, provides:

> 1. Unless contrary to any federal funding requirements or unless funds from a state grant are not timely received by the contracting public municipality but notwithstanding any other law to the contrary, all public works contracts made and awarded by the appropriate officer, board or agency of the state or of a political subdivision of the state or of any district therein, including any municipality, county and any board referred to as the public owner, for construction, reconstruction or alteration of any public work project, shall provide for prompt payment by the public owner to the contractor and prompt payment by the contractor to the subcontractor and material supplier . . . . [Emphasis added.]

The remaining subsections set forth specific requirements for complying with the above mandate. Section 34.058.1, RSMo, as enacted by this bill, provides:

> 1. As used in this section, the term "public works contract" means a contract of the state, county, city and other political subdivisions of the state, except the Missouri Highway and Transportation Department, for the construction, alteration, repair or maintenance of any

> building, structure, highway, bridge, viaduct, pipeline, public works, or any other works dealing with construction, which shall include, but need not be limited to moving, demolition, or excavation performed in conjunction with such work. [Emphasis added.]

The rest of Section 34.058 renders void any clause in a public works contract which purports to limit or eliminate legal and equitable rights of the contractor with respect to delays in performing the contract which are caused by the contracting public entity, with certain limitations. These new sections of Chapter 34, RSMo, apply to the St. Louis Housing Authority as a political subdivision.

In summary, Chapter 34, RSMo, as a whole does not apply to the St. Louis Housing Authority; however, certain sections within the chapter do apply.

Very truly yours,

William L. Webster

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June 14, 1990

OPINION LETTER NO. 132-90

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Section 3(b) of Article IX of the Missouri Constitution. A copy of the initiative petition and the proposed amendment which you submitted to this office on June 14, 1990, are attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. See Moore v. Brown, 165 S.W.2d 657 (Mo. banc 1942). Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure

CIRCUIT CLERKS:
CIRCUIT COURT:
COUNTY JAIL:
COUNTY SALES TAX:
JAILS:
PROSECUTING ATTORNEY:
SHERIFFS:
TAXATION - GENERAL:
TAXATION - COUNTY SALES TAX:

A third class county may expend sales tax revenue collected pursuant to Section 67.582, RSMo Supp. 1989, for a facility to house associate circuit court courtrooms, the circuit clerk's office, the county prosecuting attorney's office, the county sheriff's office, and the county jail.

November 29, 1990

OPINION NO. 133-90

R. Kevin Barbour
Butler County Prosecuting Attorney
Butler County Courthouse
Poplar Bluff, Missouri 63901

Dear Mr. Barbour:

This opinion is in response to your questions asking:

> 1. Can a third class county expend sales tax revenue collected pursuant to RSMo § 67.582 for a facility which houses one or two Associate Circuit Court courtrooms and clerk's offices and/or the county prosecutor's office, in addition to a jail and sheriff's offices?
>
> 2. Alternatively, may the county build a facility for jail, sheriff's offices, courtrooms and clerk's offices and prosecutor's offices, but separate the cost of any part of it not considered a law enforcement purpose and pay for such nonallowable portion of the facility from general funds?

You have provided the following information:

> Butler County has in effect a permanent 1/2 cent sales tax under RSMo § 67.505. Butler County has no other sales tax. The county commission desires to place on the ballot a request for an additional county 1/2 cent sales tax under RSMo § 67.582. The main purpose for the additional revenue would be

> the construction and operation of a county jail and sheriff's offices. Present architect plans provide for the new facility to be annexed to the present court house. Alternate plans would place it across a street from the present court house . . . .
>
> Butler County is in dire need of a new jail and sheriff's office, but also sorely needs a new courtroom and prosecutor's offices.

Section 67.582, RSMo Supp. 1989, provides for the assessment of a law enforcement sales tax. The statute provides, in part, the following:

> 67.582. Law enforcement sales tax--rate of tax--election procedure--special trust fund--duties of director of revenue--exemptions, discounts, penalties, refunds--delinquent taxes, procedure (all counties except first class charter).--1. The governing body of any county, except a county of the first class with a charter form of government, is hereby authorized to impose, by ordinance or order, a sales tax in the amount of one-fourth of one percent, three-eighths of one percent or one-half of one percent on all retail sales made in such county which are subject to taxation under the provisions of sections 144.010 to 144.510, RSMo.
>
> * * *
>
> 2. The ballot of submission shall contain, but need not be limited to, the following language:
>
> > Shall the county of ..... (county's name) impose a county-wide sales tax of ..... (insert amount) for the purpose of providing <u>law enforcement services</u> for the county?
> >
> > [ ] Yes
> >
> > [ ] No

* * *

3. All revenue received by a county from the tax authorized under the provisions of this section shall be deposited in a special trust fund and shall be used solely for providing law enforcement services within such county for so long as the tax shall remain in effect.

4. Once the tax authorized by this section is abolished or is terminated by any means, all funds remaining in the special trust fund shall be used solely for providing law enforcement services within the county. Any funds in such special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other county funds.

* * *

13. All sales taxes collected by the director of revenue under this section on behalf of any county, less one percent for cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in this section, shall be deposited in a special trust fund, which is hereby created, to be known as the "County Law Enforcement Sales Tax Trust Fund". . . . Expenditures may be made from the fund for any law enforcement functions authorized in the ordinance or order adopted by the governing body submitting the law enforcement tax to the voters. [Emphasis added.]

* * *

The terms "law enforcement services" and "law enforcement functions" are not defined. There is no evidence in the statute of a legislative intent to restrict these terms to any particular type of law enforcement service or function. On the contrary, the legislature has provided that the funds may be

expended "for any law enforcement functions authorized in the ordinance or order adopted by the governing body . . . ." [Emphasis added.] Section 67.582.13. The word "any" is all-comprehensive and the equivalent of "every." State ex rel. Randolph County v. Walden, 357 Mo. 167, 206 S.W.2d 979, 983 (banc 1947).

The terms are to be given their plain and ordinary meaning in accordance with the rule of statutory construction often expressed as: "The primary rule of statutory construction is to ascertain the intent of the lawmakers from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning." Blue Springs Bowl v. Spradling, 551 S.W.2d 596, 598 (Mo. banc 1977).

Turning to Webster's Third New International Dictionary for the plain and ordinary meaning of "service," "function," and "enforce", we find, in part, the following:

> enforce - to put in force: cause to take effect: give effect to esp. with vigor [laws] . . . syn. Implement: Enforce refers to requiring operation, observance, or protection of laws, orders, contracts, and agreements by authority, often that of a whole government or of its executive or legal branches [this law is seldom enforced] . . . .
>
> function - the action for which a person or thing is specially . . . responsible . . . the activity appropriate to the nature or position of a person or thing . . . . syn. Function, office, duty, and province can signify in common the acts, activity, or operations expected of a person or thing by virtue of his or its nature, structure, status, or position. . . .
>
> service - the duties, work, or business performed or discharged by a government official. . . .

"Law enforcement services" and "law enforcement functions" appear to be synonymous terms as used in Section 67.582.

In addressing the first question you pose, we need to consider if a facility to be used by each of the following can

be considered a "law enforcement service" - "law enforcement function": 1) jail and sheriff's office, 2) county prosecutor's office, and 3) associate circuit court courtroom and circuit clerk's office.

Turning first to the jail and sheriff's office, Section 221.020, RSMo Supp. 1989, provides in part:

> 221.020. Sheriffs to be jailers, exception, Clay County. --Except as otherwise provided in this section, the sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible. . . .

The exception for Clay County in Section 221.020 is not relevant to your question since we understand your question relates to Butler County.

The incarceration of persons charged with or convicted of law violations obviously is a "law enforcement function". That the sheriff is responsible for same is evident from Section 221.020 above and other sections of Chapter 221, RSMo. See also, Home Indemnity Company v. Johnson County Fiscal Court, 682 F.Supp. 326, 328 (E.D. Ky. 1987), wherein the operation of a county jail was deemed "law enforcement" within the meaning of an exclusion in the county liability insurance policy.

Chapter 57, RSMo, further sets forth duties of the sheriff. Among his duties are those contained in Sections 57.100 and 57.110, RSMo 1986. These sections provide:

> 57.100. Duties generally.--Every sheriff shall quell and suppress assaults and batteries, riots, routs, affrays and insurrections; shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by circuit and associate circuit judges.
>
> 57.110. Duties as conservators of the peace--return of recognizance.--Every sheriff is a conservator of the peace

> within his county, and shall cause all offenders against law, in his view, to enter into recognizance, with security, to keep the peace and to appear at the next term of the circuit court of the county, and to be committed to jail in case of failure to give the recognizance. The sheriff shall certify the recognizance to the clerk of the circuit court.

There seems no doubt the sheriff performs a law enforcement function. Based on the foregoing, we conclude a facility to house the jail and sheriff's office is a permissible use of the sales tax revenue collected under Section 67.582.

Turning to the office for the county prosecuting attorney, Section 56.060, RSMo 1986, provides in part:

> 56.060. Prosecutor's duties, generally, expenses -- employed attorney, how compensated. --1. Each prosecuting attorney shall commence and prosecute all civil and criminal actions in his county in which the county or state is concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county. . . .

A prosecuting attorney's prosecution of criminal matters in which the county or state has an interest is a "law enforcement service" or "law enforcement function" for the reason that there would be no enforcement of applicable statutes or ordinances in the absence of such prosecution. See also, Criminal Injuries Compensation Board v. Gould, 331 A.2d 55, 75 (Md. 1975) in which the term "law enforcement agency" was held to include "the police, prosecutors and arguably, the courts and even the Grand Jury . . . ."

The final aspect of your first question concerns the associate circuit court courtroom and circuit clerk's office. Section 557.011, RSMo 1986, provides:

> 557.011. Authorized dispositions. --1. Every person found guilty of an offense shall be dealt with by the court in accordance with the provisions of this chapter . . . .

> 2. Whenever any person has been found guilty of a felony or a misdemeanor the court shall make one or more of the following dispositions of the offender in any appropriate combination. The court may:
>
> (1) Sentence the person to a term of imprisonment . . .
>
> (2) Sentence the person to pay a fine . . .
>
> (3) Suspend the imposition of sentence . . .
>
> (4) Pronounce sentence and suspend its execution . . .
>
> (5) Impose a period of detention as a condition of probation . . .
>
> 3. Whenever any person has been found guilty of an infraction, the court shall make one or more of the following dispositions of the offender in any appropriate combination. The court may:
>
> (1) Sentence the person to pay a fine . . .
>
> (2) Suspend the imposition of sentence . . .
>
> (3) Pronounce sentence and suspend its execution . . .
>
> 4. Whenever any organization has been found guilty of an offense, the court shall make one or more of the following dispositions of the organization in any appropriate combination. The court may:
>
> (1) Sentence the organization to pay a fine . . .
>
> (2) Suspend the imposition of sentence . . .
>
> (3) Pronounce sentence and suspend its execution . . .
>
> (4) Impose any special sentence or sanction authorized by law. [Emphasis added.]

* * *

The sentencing of law violators is one aspect of law enforcement. It is a function which may not be performed by prosecutors or sheriffs. Sentencing is but one law enforcement

function or service of the circuit and associate circuit courts. Others include presiding over preliminary hearings and trials, setting bond, etc. See Section 544.250, RSMo 1986; Chapter 546, RSMo; and Section 478.248, RSMo 1986; among others. See also, Criminal Injuries Compensation Board v. Gould, supra. It is the duty of the clerk of the circuit court to maintain a record of all orders and proceedings of the court, Section 483.075.1, RSMo 1986, and to enter judgment in the records of the court. Section 546.590, RSMo 1986. It is also the role of the clerk to deliver to the sheriff a transcript of the entry of a conviction which authorizes the sheriff to execute the sentence. Section 546.600, RSMo 1986. Therefore, we conclude a facility to house the associate circuit court courtrooms and circuit clerk's office is a permissible use of the sales tax revenue collected under Section 67.582.

Your first question having been answered in the affirmative, it is unnecessary to address your second question.

CONCLUSION

It is the opinion of this office that a third class county may expend sales tax revenue collected pursuant to Section 67.582, RSMo Supp. 1989, for a facility to house associate circuit court courtrooms, the circuit clerk's office, the county prosecuting attorney's office, the county sheriff's office, and the county jail.

Very truly yours,

William L. Webster

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November 13, 1990

OPINION LETTER NO. 135-90

G. Tracy Mehan, III, Director
Department of Natural Resources
Post Office Box 176
Jefferson City, Missouri 65102

Dear Mr. Mehan:

This opinion letter is in response to your question asking:

> Does the Department of Natural Resources have the power and authority to obtain architectural documents and plans; let contracts for repair, rehabilitation or construction; supervise construction; perform inspection and maintenance of buildings; and construct suitable public services, privileges, conveniences and facilities under any land, site or object under the department's jurisdiction and control without the approval of the Director of the Division of Design and Construction?

Your question requires an examination of several state statutory provisions involving the Department of Natural Resources, Division of Parks, Recreation and Historic Preservation, and the Office of Administration, Division of Design and Construction.

Section 8.310, RSMo Supp. 1989, explains the duties of the Division of Design and Construction as follows:

> 8.310. Duties of director as to construction, repairs and purchases--exceptions.--The director of the division of design and construction shall serve as

advisor and consultant to all department heads in obtaining architectural plans, letting contracts, supervising construction, purchase of real estate, inspection and maintenance of buildings. No contracts shall be let for repair, rehabilitation or construction without approval of the director of the division of design and construction, and no claim for repair, construction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the director of the division of design and construction; except that after the need for the construction, repair, maintenance or improvement of any building or facility serving the department of conservation or a state institution of higher learning has been determined and the proposed construction or improvement has been approved as a part of the state's building program by the division of design and construction and has been authorized by the general assembly and the governor through a proper appropriation, the department of conservation, the boards of curators of the state university and Lincoln University, the several boards of regents of the state colleges and the boards of trustees of the community junior colleges may contract for architectural and engineering services for the design and supervision of the construction, repair, maintenance or improvement of buildings or institutions and may contract for construction, repair, maintenance or improvement. The director of the division of design and construction shall not be required to review any claim for payment under any such contract not originally approved by him. No claim under any contract executed by the department of conservation or an institution of higher learning, as provided above, shall be certified by the commissioner of administration unless the entity making the claim shall certify in writing that the

> payment sought is in accordance with the contract executed by the entity and that the underlying construction, repair, maintenance or improvement conforms with applicable regulations promulgated by the director pursuant to section 8.320. No architectural or engineering fees shall be paid or allowed by any state agency relating to the purchase of movable equipment, furniture or fixtures or for repair or improvement projects, unless the director of the division of design and construction or the contracting entity heretofore exempted from review by the director of the division of design and construction, determines that the services of an architect or engineer are required in a particular situation. [Emphasis added.]

Section 8.320, RSMo 1986, provides:

> 8.320. Director to prescribe conditions and procedures for repair and maintenance of buildings.--The director of the division of design and construction shall set forth reasonable conditions to be met and procedures to be followed in the repair, maintenance, operation, construction and administration of state facilities. The conditions and procedures shall be codified and filed with the secretary of state in accordance with the provisions of the constitution. No payment shall be made on claims resulting from work performed in violation of these conditions and procedures, as certified by the director of the division of design and construction. [Emphasis added.]

Section 8.360, RSMo 1986, provides:

> 8.360. Inspection and report as to condition of buildings.--The director of the division of design and construction shall inspect all facilities and report to the general assembly at the commencement of

each regular session on their condition, maintenance, repair and utilization.

The pertinent statutes relating to the Department of Natural Resources are Sections 253.040, RSMo 1986, and 253.080, RSMo Supp. 1989. These are set out below:

> 253.040. Acquisition of land--eminent domain.--1. The department of natural resources is hereby authorized to accept or acquire by purchase, lease, donation, agreement or eminent domain, any lands, or rights in lands, sites, objects or facilities which in its opinion should be held, preserved, improved and maintained for park or parkway purposes. The department of natural resources is authorized to improve, maintain, operate and regulate any such lands, sites, objects or facilities when such action would promote the park program and the general welfare. The department of natural resources is further authorized to accept gifts, bequests or contributions of money or other real or personal property to be expended for any of the purposes of sections 253.010 to 253.100; except that any contributions of money to the department of natural resources shall be deposited with the state treasurer to the credit of the state park earnings fund and expended upon authorization of the department of natural resources for the purposes of sections 253.010 to 253.100 and for no other purposes.
>
> 2. In the event the right of eminent domain be exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the state highways and transportation commission. [Emphasis added.]
>
> 253.080. Director of natural resources may construct and operate facilities and collect fees for usage--concession contracts--limitations.--

1. The director of the department of natural resources may construct, establish and operate suitable public services, privileges, conveniences and facilities on any land, site or object under the department's jurisdiction and control, and may charge and collect reasonable fees for the use of the same. The director may charge reasonable fees for supplying services on state park areas. Any facilities so constructed under this provision shall only be done by appropriated funds.

2. The director may award by contract to any suitable person, persons, corporation or association the right to construct, establish and operate public services, privileges, conveniences and facilities on any land, site or object under the department's control for a period not to exceed twenty-five years with a renewal option, and may supervise and regulate any and all charges and fees of operations by private enterprise for supplying services and operating facilities on state park areas.

3. All contracts awarded under this section shall be entered into upon the basis of competitive sealed bids. A sworn financial statement shall accompany each bid, and all contracts shall be let by the director at a regular meeting after public notice of the time of the letting. All bids submitted prior to the opening of the meeting shall be considered. Advertisements for bids in daily or weekly newspapers shall be made by the director. The director shall accept the bid most favorable to the state from a responsible and reputable person but may, for good cause, reject any bid.

4. No contract for a period of ten years or more or a renewal thereof for such period, as provided in subsection 2 of this

section, shall be finally awarded until approved by the general assembly by concurrent resolution considered and adopted as other concurrent resolutions of the general assembly.

5. A good and sufficient bond conditioned upon the faithful performance of the contract and compliance with this law shall be required of all contractors, except that if the contractor states he is unable to provide a bond, the contractor shall place a cash reserve in an escrow account in an amount proportional to the volume of the contractor's business on the lands controlled by the department of natural resources.

6. Any person who contracts under this section with the state shall keep true and accurate records of his receipts and disbursements arising out of the performance of the contract and shall permit the division of parks and recreation of the department of natural resources and the state director or revenue to audit them. The division of parks and recreation of the department of natural resources and the state director of revenue shall audit the receipts and disbursement of each contract once every two years and upon the expiration of the contract. For the purpose of subsection 5 of this section and this subsection, no contract shall be deemed to extend to operations or management in more than one state park. [Emphasis added.]

Similar questions have previously been addressed by this office. In Attorney General Opinion No. 25, Bond, 1974, a copy of which is enclosed, this office responded to the question: "Does the Department of Conservation have the power and authority to obtain architectural documents, let contracts for repair, rehabilitation or new construction of facilities, supervise construction, and perform inspection and maintenance of facilities without the approval of the Commissioner of Administration?" In that opinion we concluded that Sections

8.310 and 8.320, RSMo 1969, were applicable to the Conservation Commission and did not conflict with Article IV, Section 40 of the Missouri Constitution which vests with the Commission the "control, management, restoration, conservation and regulation" of the state's wildlife. Opinion No. 25, Bond, 1974, states:

> A close examination of Section 8.310 reveals that while the statute imposes a duty upon the Commissioner of Administration to serve as "advisor and consultant" in all of those above-mentioned matters, the statute actually requires formal approval only as to contracts "let for repair, rehabilitation or construction." Consequently, the Department of Conservation may obtain architectural documents, supervise construction, and perform inspection and maintenance of facilities without formal approval of the commissioner provided the Department's procedures in doing so conform to whatever reasonable conditions and procedures have been set by the Commissioner of Administration, pursuant to his authority under Section 8.320. [Emphasis added.]

pp. 5-6.[1] See also Attorney General Opinion Letter No. 27, Bond, 1974 (conclusion reached in Opinion No. 25, Bond, 1974, is applicable to the State Park Board) and Attorney General Opinion No. 28, Bond, 1974, copies of which are enclosed. Opinion Letter No. 27, Bond, 1974, is particularly relevant since the State Park Board was transferred by the Omnibus State Reorganization Act of 1974 (Appendix B, RSMo 1986) to the Department of Natural Resources. See Section 640.010.3, RSMo 1986.

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[1]Subsequent to this opinion, Section 8.310, RSMo 1969, was amended by Senate Bill No. 691, 82nd General Assembly, Second Regular Session (1984), adding the exemption pertaining to the Department of Conservation.

G. Tracy Mehan, III, Director

Accordingly, we conclude that the Department of Natural Resources is not required to obtain formal approval of the Director of the Division of Design and Construction in obtaining architectural documents and plans, in supervising construction, or in the inspection and maintenance of facilities, provided the Department's procedures conform to whatever reasonable conditions and procedures have been set by the Director of the Division of Design and Construction pursuant to Section 8.320, RSMo 1986. The Department of Natural Resources must obtain formal approval of the Director of the Division of Design and Construction of contracts let for repair, rehabilitation or construction of facilities.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 25, Bond, 1974
Opinion Letter No. 27, Bond, 1974
Opinion No. 28, Bond, 1974

ATTORNEY GENERAL OF MISSOURI

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July 3, 1990

OPINION LETTER NO. 139-90

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall Article IX section 3(b) of the Constitution of Missouri be amended to change the amount of annual revenue used to support the state's free public schools from one-fourth of total revenue -exclusive of interest and sinking fund- to one-third of total revenue -exclusive of federal funds; gifts, donations and bequests; net proceeds from the sale of bonds; and revenue from dedicated taxes imposed prior to January 1, 1991 or approved by vote after December 31, 1990; and further to exclude court ordered payments for violation of the United States Constitution as a portion satisfying the one-third support requirement?

See our Opinion Letter No. 132-90.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CONFLICT OF INTEREST: A commissioner of the St. Louis
OFFICERS: Regional Convention and Sports
OFFICIALS: Complex Authority established
ST. LOUIS CITY: under Sections 67.650 through 67.658, RSMo Supp. 1989, is not prohibited from serving as a member of the authority because he is employed by a securities firm submitting a proposal for underwriting bonds issued by the authority; however, such commissioner may not participate in the process of selecting the underwriter.

July 23, 1990

OPINION NO. 143-90

James R. Moody, Commissioner
Office of Administration
State Capitol Building, Room 125
Jefferson City, Missouri 65101

Dear Commissioner Moody:

This opinion is in response to your questions asking:

> Is it prohibited by law for a member of the St. Louis Regional Convention and Sports Complex Authority who is employed by a firm submitting a proposal for underwriting bonds issued by the Authority to participate in the process of selecting the underwriter(s)?
>
> Is it prohibited for that person to be a member of the Authority if he does not participate in the process of selecting underwriter(s)?

You have provided the following statement of facts:

> The Regional Convention and Sports Complex Authority is established by sections 67.650 through 67.658 RSMo. The eleven commissioners have been appointed in accordance with the statutory provisions. The State of Missouri, the City of St. Louis, and St. Louis County are in the process of undertaking an expansion of the Cervantes Convention Center suitable for use as a convention facility and as a National Football League stadium. That facility will be financed through the Regional Convention and Sports Complex

> Authority as permitted by the statutory sections referenced above. One member of the Authority is an employee of Prudential-Bache Securities, Inc., though he does not work in the area of Municipal Finance. He is not an officer, director or shareholder of that company. Representatives of Prudential-Bache Securities, Inc. have expressed interest in submitting a proposal to act as an underwriter with respect to any bonds issued by the Authority to finance the project. Due to the nature and complexity of the financing involved, the Authority will select underwriters through proposals submitted by potential underwriters and will sell its bonds through negotiated sale rather than through a competitive bid. A request for proposals for underwriters will be utilized to solicit proposals from qualified firms. The Authority member who is employed by Prudential-Bache Securities, Inc. also sits on the finance committee of the Authority, which committee will make recommendations to the full Authority concerning financing issues.

The St. Louis Regional Convention and Sports Complex Authority to which you refer in your questions is established under Sections 67.650 through 67.658, RSMo Supp. 1989. Section 67.650 provides:

> 67.650. Regional convention and sports complex authority established.--In each city not within a county and in each first class county with a charter form of government which adjoins such city not within a county there is hereby established a joint "Regional Convention and Sports Complex Authority".

Section 67.652 provides in part that "[t]he authority shall consist of up to eleven commissioners who shall be qualified voters of the state of Missouri and residents of either the city or the county." Section 67.653.1(10)(i) provides:

> (i) The authority is hereby declared to be performing a public function and bonds of the authority are declared to be issued for an essential public and governmental purpose and, accordingly, interest thereon and income therefrom shall

> be exempt from income taxation by the state of Missouri; [Emphasis added.]

Section 67.655 provides:

> 67.655. Tax exemption for property and income of authority.--The income of the authority and all properties at any time owned by the authority shall be exempt from all taxation in the state of Missouri. For the purposes of section 409.402, RSMo, all bonds issued by the authority shall be deemed to be securities issued by a public instrumentality of the state of Missouri. [Emphasis added.]

Based on Sections 67.650 through 67.658, particularly the provisions referred to above, it is apparent the commissioners composing the St. Louis Regional Convention and Sports Complex Authority function as public officials or officers in discharging their statutory duties.

A general statement of the law applicable to public officers is the following:

> At common law, it was held that a conflict of interest existed if an administrative official voted on the matter in which he had a personal direct and pecuniary interest. This rule especially applied in cases where public officials could gain personally from their inside information.
>
> A person's status as a public officer forbids him from placing himself in a position where his private interest conflicts with his public duty. His good faith is of no moment because it is the policy of the law to keep him so far from temptation as to insure the exercise of unselfish public interest. This policy is not limited to a single category of public officer but applies to all public officials. Anything which tends to weaken public confidence and to undermine the sense of security for individual rights is against public policy.

63A Am Jur 2d, Public Officers and Employees, Section 322.

It is not proper for a public officer to be placed in a situation wherein there either is or may be a conflict of

loyalties between his employer and the public. Therefore, we conclude the commissioner specified in your inquiry is prohibited from participating in the process of selecting an underwriter when the firm which employs him intends to submit a proposal to the authority. The commissioner may not participate in the drafting of the request for proposals nor participate in any proceedings or discussions relevant to the proposals or affecting his employer.

Your second question concerns whether the commissioner specified in your inquiry may serve as a member of the authority. Our office addressed a similar question relating to county judges (now county commissioners) in Missouri Attorney General Opinion Letter No. 147, Fickle, 1973, a copy of which is enclosed. The question addressed in that opinion letter was whether or not a county judge was disqualified from holding his office when he was employed by a corporation which had large property holdings in that county. We concluded the county judge was not disqualified from holding office because of his employment but should not participate in decisions affecting his employer. Similarly, there is no constitutional or statutory prohibition on the commissioner serving as a member of the authority because of his private employment. Therefore, we conclude the commissioner specified in your inquiry is not prohibited from serving as a member of the authority.

CONCLUSION

It is the opinion of this office that a commissioner of the St. Louis Regional Convention and Sports Complex Authority established under Sections 67.650 through 67.658, RSMo Supp. 1989, is not prohibited from serving as a member of the authority because he is employed by a securities firm submitting a proposal for underwriting bonds issued by the authority; however, such commissioner may not participate in the process of selecting the underwriter.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 147, Fickle, 1973

CITIES, TOWNS AND VILLAGES:
CONFLICT OF INTEREST:
LOBBYING:

(1) The provisions of Section 105.483(8), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990), apply to administrative boards of constitutional charter cities such as Springfield, Missouri, when such boards administer the affairs of municipal utilities and have authority to make contracts and enact rules; (2) a city council does not have authority to designate persons subject to reporting requirements under Section 105.483(8) by virtue of the provisions of Section 105.483(7).

December 11, 1990

OPINION NO. 150-90

The Honorable Chuck Wooten
Representative, District 137
State Capitol Building, Room 200B-C
Jefferson City, Missouri 65101

Dear Representative Wooten:

This opinion is in response to your questions asking:

> 1. Do the provisions of Section 105.483(8) apply to administrative boards of constitutional charter cities such as Springfield, Missouri where such boards administer the affairs of municipal utilities and have authority to make contracts and enact rules?
>
> 2. Does the city council have authority to exempt such boards from reporting requirements by virtue of the provision of subsection 7 of the same statute?

A letter accompanying your questions explains that the Springfield City Utilities' Board of Directors consists of members appointed by the city council. Directors serve three-year terms and are not compensated for their service. The board's duties consist of responsibility for the management and control of the electric, gas, water and transit utilities owned by the city, including authority to enter into contracts and to adopt rules governing the utilities.

Section 105.483(8), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990) (hereinafter "House Bills Nos. 1650 and 1565"), provides:

> 105.483. Each of the following persons shall be required to file a financial statement:
>
> * * *
>
> (8) Any officer or employee of any political subdivision who has the authority to authorize or enter into any contract on behalf of the political subdivision or who is empowered to adopt a rule or regulation for the political subdivision, or who participates in or votes on the adoption of any such rule or regulation, other than rules and regulations governing the internal affairs of the political subdivision; except that this subdivision shall not apply to such political subdivisions which have an annual general operating receipts of less than twenty million dollars.

Section 105.483 does not define "political subdivision" or "officer." Section 105.145(2), RSMo 1986, defines a "political subdivision" as "any agency or unit of this state, except counties and school districts, which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied." It would appear, initially, that this definition, set out in the same chapter as Section 105.483 would apply. "When the legislature enacts a statute referring to terms which have had other judicial or legislative meaning attached to them, the legislature is presumed to have acted with knowledge of that judicial or legislative action." Citizens Electric Corporation v. Director of Department of Revenue, 766 S.W.2d 450, 452 (Mo. banc 1989). However, the definition contained in Section 105.145, RSMo 1986, exempts school districts. Section 105.483 specifically refers to the applicability of this section to school districts by creating an exemption for particular districts with an annual operating budget of less than twenty million dollars. Section 105.483(2) and (7). "[I]t is presumed that the legislature does not enact meaningless provisions." Bartley v. Special School District of St. Louis County, 649 S.W.2d 864, 867 (Mo. banc 1983). Therefore, the legislature could not have intended to define "political subdivision" in the

context of Section 105.483(8) using the definition set out in Section 105.145, RSMo 1986.

Article X, Section 15 of the Missouri Constitution defines political subdivisions "to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax." This definition is more compatible with the intent of the legislature in enacting Section 105.483. However, under either definition, the City of Springfield is a political subdivision. See also Missouri Attorney General Opinion Letter No. 174-90 at page 17.

Section 105.483 does not define "officer." Courts have recognized:

> It is not possible to define the words "public office or public officer." The cases are determined from the particular facts, including a consideration of the intention and subject-matter of the enactment of the statute or the adoption of the constitutional provision.

State ex rel. Scobee v. Meriwether, 200 S.W.2d 340, 341 (Mo. banc 1947), quoting State ex inf. McKittrick v. Bode, 342 Mo. 162, 113 S.W.2d 805, 806 (1938). In determining whether one is a public officer, a delegation of some part of sovereign power is an important factor. Kirby v. Nolte, 349 Mo. 1015, 164 S.W.2d 1, 8 (Mo. banc 1942). Based upon the duties and authorities of the members of the Springfield City Utilities' Board of Directors, we conclude they are officers of the political subdivision, the City of Springfield. See also Missouri Attorney General Opinion Letter No. 174-90 at page 23. We further understand that the City of Springfield has annual general operating receipts in excess of twenty million dollars, so the exemption contained in Section 105.483(8) does not apply.

We note that Article VI, Section 22 of the Missouri Constitution provides in part: "No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous constitution. . . ." Nevertheless, "a constitutional charter city is not free from all state regulation." Cohen v. Poelker, 520 S.W.2d 50, 53-54 (Mo. banc 1975). In Cohen, the Court concluded that Missouri's Sunshine Law established a policy of general interest and importance and was applicable statewide at all levels of

government. Id., at 54. The same is true of the provisions of Section 105.483.

Therefore, in answer to your first question, we conclude that the provisions of Section 105.483(8) apply to administrative boards of constitutional charter cities such as Springfield, Missouri, when such boards administer the affairs of municipal utilities and have authority to make contracts and enact rules.

Your second question refers to Section 105.483(7). Section 105.483(7) provides for designation of persons required to file financial interest statements pursuant to Section 105.483(7). You inquire whether persons subject to filing under Section 105.483(8) can likewise be designated by the city council.

Section 105.483(7), RSMo, as enacted by House Bills Nos. 1650 and 1565, provides:

> 105.483. Each of the following persons shall be required to file a financial interest statement:
>
> * * *
>
> (7) Any officer or employee of any political subdivision who has the direct administrative and operating authority, to approve, disapprove or make binding decisions for the political subdivision including decisions for the political subdivision including decisions relating to the issuing of licenses and permits. Each governing body of a political subdivision or special district shall designate those officers or employees who are required to report pursuant to this subdivision; except that this subdivision shall not apply to such political subdivisions which have an annual general operating receipts of less than ten million dollars, or to school districts with an annual operating budget of less than twenty million dollars. [Emphasis added.]

The underscored phrase expressly states that the governing body of a political subdivision is required to designate the officers or employees who must file a report pursuant to subsection 7. "[W]ords used in statutes are to be considered in

their plain and ordinary meaning in order to ascertain the intent of the lawmakers." Bartley v. Special School District of St. Louis County, supra, 649 S.W.2d at 867. See also Missouri Attorney General Opinion Letter No. 174-90 at page 13.

When a statute "directs the performance of certain things by specified means or in a particular manner, or by a particular person or class of persons, it implies that it shall not be done otherwise or by a different person or class of persons." Parvey v. Humane Society of Missouri, 343 S.W.2d 678, 681 (Mo. App. 1961). Where the power of the governing body of a political subdivision to designate who must file a financial interest statement is clearly limited to officers and employees set out in subsection 7, such power cannot be extended to the officers and employees set out in subsection 8. "Provisions not found plainly written or necessarily implied from what is written 'will not be imparted or interpolated therein in order that the existence of [a] right may be made to appear when otherwise, upon the face of [the statutes], it would not appear." St. Louis County Library District v. Hopkins, 375 S.W.2d 71, 75 (Mo. 1964), quoting Allen v. St. Louis-San Francisco Ry. Co., 338 Mo. 395, 402, 90 S.W.2d 1050, 1053 (1935). Therefore, we conclude the city council does not have authority to designate persons subject to reporting requirements under Section 105.483(8) by virtue of the provisions of Section 105.483(7).

CONCLUSION

It is the opinion of this office that: (1) the provisions of Section 105.483(8), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990), apply to administrative boards of constitutional charter cities such as Springfield, Missouri, when such boards administer the affairs of municipal utilities and have authority to make contracts and enact rules; (2) a city council does not have authority to designate persons subject to reporting requirements under Section 105.483(8) by virtue of the provisions of Section 105.483(7).

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

CIRCUIT COURT:
STATE AUDITOR:
STATE AGENCY:

The State Auditor is authorized to audit the Sixteenth Judicial Circuit pursuant to Article IV, Section 13, Missouri Constitution, and Section 29.200, RSMo 1986.

October 9, 1990

OPINION NO. 170-90

The Honorable Margaret Kelly, CPA
Missouri State Auditor
301 West High Street, Room 880
Jefferson City, Missouri 65101

Dear Mrs. Kelly:

This opinion is in response to your question asking:

> Is the State Auditor's Office legally authorized to audit the Sixteenth Judicial Circuit?

The statement of facts accompanying your question explains that pursuant to Missouri Attorney General Opinion No. 7-83, a copy of which is enclosed, the Sixteenth Judicial Circuit appears to be subject to audit by the State Auditor's Office.

In Opinion No. 7-83, we concluded that the adoption of Conference Committee Substitute for Senate Joint Resolution No. 24, 1976 Mo. Laws 819 (adopted August 3, 1976; effective January 2, 1979), known as the "Judicial Article Amendment," and the Court Reform and Revision Act of 1978, House Bill No. 1634, 1978 Mo. Laws 696,

> "made the circuit courts agencies of the State of Missouri. Accounts of the circuit courts and all divisions of the circuit courts in the custody of officers or employees of the circuit courts, e.g., circuit and division clerks, are subject to audit pursuant to Article IV, Section 13, Missouri Constitution, and Section 29.200, RSMo 1978."

Since Opinion No. 7-83 was issued, the authorities relied upon have not changed to require that a different conclusion be reached. Nor do we find any authorities distinguishing the Sixteenth Judicial Circuit from other judicial circuits so as to require a different conclusion in response to your question.

CONCLUSION

It is the opinion of this office that the State Auditor is authorized to audit the Sixteenth Judicial Circuit pursuant to Article IV, Section 13, Missouri Constitution, and Section 29.200, RSMo 1986.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 7-83

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

November 29, 1990

OPINION LETTER NO. 174-90

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building, Room 210
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your questions concerning Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990) (hereinafter "House Bills Nos. 1650 and 1565"). The questions you posed are attached hereto as Attachment A. We have summarized your questions as follows:

WHO IS COVERED BY THE LAW?

1. Who is covered by the definition of "lobbyist" set out in Section 105.470.1(3)? For example:

A. If the Commissioner of Securities brings a security fraud investigation to the attention of the Attorney General and seeks a criminal prosecution, is the Commissioner of Securities a "lobbyist"?

B. If an executive director for a professional licensing board asks the Secretary of State to refuse to grant certain types of names for professional corporations, is that lobbying?

C. Is an administrator of a state agency attempting to have the Secretary of State compile a list of all new corporations on a periodic basis for use by that agency engaged in influencing the taking of any action?

D. Is the request by someone in the Governor's Office of an executive agency to delay the implementation of a proposed regulation a lobbying activity?

2. What is an administrative agency as referred to in Section 105.483(3) [Section 1(3) of House Bills Nos. 1650 and 1565]? For example:

A. Is the Administrative Hearing Commission an administrative agency? If so, which Commissioner is considered the head of the agency?

B. Is the Commissioner of Securities, whose position is defined by statute, the head of an administrative agency?

C. Is the Public Service Commission an administrative agency? If so, are all the commissioners considered the head of an agency?

D. Is the Commission on Human Rights an administrative agency? If so, is each commissioner a head of an administrative agency?

3. Who makes a "binding decision" as referred to in Section 105.483(5) [Section 1(5) of House Bills Nos. 1650 and 1565]? For example:

A. Is a decision by a corporations clerk in the Secretary of State's Office to file or not file a new corporation or to grant the use of a corporate name a "binding decision"?

B. If an employee of a branch office of the Department of Revenue refuses to issue a car title because there is no mileage statement provided or refuses to issue license plates because the owner cannot show insurance coverage, is it a "binding decision"?

C. Does the decision to pursue litigation or settle a case made by an assistant attorney general or other agency attorney

(e.g., Department of Revenue or Department of Social Services), involve making a "binding decision"?

D. Does the decision by an executive director of a professional registration board to investigate a licensed professional constitute a "binding decision"?

4. What is a "binding decision" as referred to in Section 105.483(7) [Section 1(7) of House Bills Nos. 1650 and 1565]? For example:

A. Is an employee for the Recorder of Deeds who refuses to record a general warranty deed because of its failure to be acknowledged correctly by a notary public making a "binding decision"?

B. Does the language in Section 105.483(7) "making binding decisions for the political subdivision including decisions . . . relating to the issuing of licenses and permits" act to limit or expand the meaning of making "binding decisions"?

5. What does "enter into any contract" mean in the context of Section 105.483(6) [Section 1(6) of House Bills Nos. 1650 and 1565]? For example, when a state agency secretary orders extra clerical supplies for a small amount of money, such as twenty dollars or less, is that entering into a contract to purchase? Must that secretary file a financial interest statement?

6. What does "participates in . . . the adoption of any such rule or regulation" mean in Section 105.483(6)? For example, if the Commissioner of Securities circulates a draft securities registration rule to his investigators for their comments:

A. Do such comments, if they result in changes or additions to the rule, result in participating in the adoption of any such rule?

B. If an investigator helps draft the rule, is this participating in the adoption of the rule?

C. Is an investigator who comments on the rule or submits a memorandum commenting on the rule participating in the adoption of the rule even if his comments do not result in changes or additions to the rule?

7. In the Section 105.483(8) [Section 1(8) of House Bills Nos. 1650 and 1565] reference to officers and employees of a political subdivision having authority to enter into contracts:

A. Is an employee of a county clerk's office entering into a contract if he purchases a small amount of clerical supplies?

B. If a cook in each school in a school district is authorized to purchase food, is that entering into a contract?

8. In the Section 105.483(8) reference to officers and employees of a political subdivision participating in the adoption of rules and regulations, if the manager of a city-owned swimming pool creates posted rules for the conduct of swimmers, must that manager file a financial interest statement?

9. "Special districts" are not mentioned except in the second sentence of Section 105.483(7). They are not mentioned in the first sentence of Section 105.483(7) and are not mentioned at all in Section 105.483(8). Does this mean that "special districts" are not to be considered as "political subdivisions" other than as stated in this limited context or should "special districts" be considered as "political subdivisions" wherever that term is mentioned?

10. Do candidates for a judgeship file a financial interest statement? If so, with whom do they file, the Secretary of State or the Commission on Retirement, Removal and Discipline? Are candidates for judgeships state elected officials or local elected officials?

11. What is the meaning of "annual general operating receipts" in Section 105.483(7)? Does the term "annual budget" in Section 105.483(2) [Section 1(2) of House Bills Nos. 1650 and 1565] differ from the term "annual general operating receipts" in Section 105.483(7)?

12. In determining "annual general operating receipts" and "annual budget," is income that is produced by the ownership of a political subdivision's electric plant, water treatment plant or hospital, for example, included? If not, what are the distinctions between which types of revenue-generating services should be included and which types should not be?

13. Are non-compensated members of state boards and commissions (as well as local boards and commissions) considered officers or employees under Section 105.483(5), (6), (7) and (8)? What is a definition of officer?

WHAT TIME PERIOD IS COVERED BY THE FINANCIAL INTEREST STATEMENT AND WHEN MUST DISCLOSURE BE MADE?

14. Section 105.487 [Section 3 of House Bills Nos. 1650 and 1565] provides when a financial interest statement shall be filed. The majority are filed between April 15 and May 1 each year. However, the year covered by the statement is not defined as when it begins and ends. Is it a calendar year or is it the year between April 15 and April 14?

15. Section 105.485.2 [Section 2.2 of House Bills Nos. 1650 and 1565] states: "Each person required to file a financial interest statement shall file the following information for himself, his spouse and dependent children in his custody <u>for the twelve months preceding the date of filing the statement</u> . . . " Does the underlined phrase modify "custody" or "financial interest statement"?

16. When is the first report due? Since the law does not go into effect until January 1, 1991, can it request information for a time period before that time, that is, for the calendar year 1990?

17. If someone who would normally be required to report resigns his position before April 15, 1991,

does he still have to file a report? If so, would he have to report if he resigned his position before January 1, 1991?

WHAT MUST BE DISCLOSED?

18. What is the definition of "income" as referred to in Section 105.485.2(1) [Section 2.2(1) of House Bills Nos. 1650 and 1565]? Is there a difference between "income" and "earned income" as referred to in Section 105.485.2(3) [Section 2.2(3) of House Bills Nos. 1650 and 1565]?

19. How is the ten thousand dollar value referred to in Section 105.485.2(4) and (5) [Section 2.2(4) and (5) of House Bills Nos. 1650 and 1565] determined?

A. For a piece of real property, is it the purchase price, appraised fair market value, assessor's valuation or possible selling price? If the appraisal value is used, must the property be appraised for each reporting period?

B. As to the value of stock and other equity interests, when is it valued? At the beginning of the year, the end, or at its highest value during the year? And if the equity interest is held in a mutual fund, how is it valued? Or if the equity interest is a pension fund, how is that valued?

C. For example, a Missouri state employee may have deferred nine thousand dollars of his compensation into PEBSCO with five thousand dollars into a mutual fund and four thousand into another equity. Each earns interest and together they value over ten thousand dollars, but not separately. Are they reported?

20. Section 105.485.2(3) requires disclosure of the name and address of any other source of earned income of one thousand dollars or more. Does this require persons such as doctors, lawyers, accountants and other business and professional people who are members of boards or commissions to report the names and addresses of their clients who may pay an

individual fee of over one thousand dollars directly to the reporting person?

MISCELLANEOUS QUESTIONS.

21. Where does a reporting person file if they live outside the state if they are an officer or employee of a political subdivision that is situated in more than one county? Section 105.489(4) [Section 4(4) of House Bills Nos. 1650 and 1565] requires a reporting person to file with the "election authority having jurisdiction for the residence of the person filing." A multi-county school district located next to the state's border may have an employee who lives in another state. Where does that person file?

22. Section 105.491.2(1) [Section 5.2(1) of House Bills Nos. 1650 and 1565] allows a filing officer, other than the Secretary of State to, "charge a reasonable filing fee to cover the actual pro-rata cost of providing such services as approved by the secretary of state." Does this provision require the Secretary of State to approve local filing fees and does this filing fee require a popular vote in accordance with the Hancock Amendment?

WHO IS COVERED BY THE LAW?

Your first series of questions relate to the parties subject to the requirements of these provisions.

Question 1: Who is covered by the definition of "lobbyist" set out in Section 105.470.1(3)?

The definition of "lobbyist" is as follows:

> 105.470. 1. As used in this section, unless the context requires otherwise, the following words and terms mean:
>
> * * *
>
> (3) "Lobbyist", any person, including persons employed by or representing federal or state agencies and all political subdivisions thereof, who acts in the course of his employment or who engages himself for pay or for any valuable

> consideration for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any legislative action or any action by the executive branch or any agency or commission of state government; or any person who receives any direct or indirect benefits or expenses for lobbying activities, whether by grant or otherwise, from any state, the federal government or any private not for profit foundation or corporation; provided that the term shall not include any member of the general assembly or elected state officer;
>
> * * *

Your specific examples relate to the amendment enacted by House Bills Nos. 1650 and 1565 to include within the definition of "lobbyist" persons who act in the course of their employment or engage themselves for pay or any valuable consideration "for the purpose of attempting to influence . . . any action by the executive branch or any agency or commission of state government." In construing this amendment, legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986).

Your first example concerns the Commissioner of Securities informing the Attorney General of a securities fraud investigation and seeking a criminal prosecution. Section 409.410, RSMo 1986, authorizes the Commissioner of Securities to refer evidence concerning violations of certain provisions in Chapter 409 to the Attorney General who may institute criminal proceedings. Therefore, when the Commissioner of Securities seeks a criminal prosecution, he is acting "in the course of his employment." Further, the Commissioner is attempting to influence the Attorney General, a member of the executive branch, to take an action, namely, institute criminal proceedings. Therefore, in such instances, the Commissioner is a "lobbyist" as defined in Section 105.470.1(3).

Your second example concerns an executive director for a professional licensing board asking the Secretary of State to refuse to grant certain types of names for professional corporations. Section 356.041.2, RSMo 1986, requires the licensing authority of the professional involved in an incorporating professional corporation to file a certificate with the Secretary of State stating, among other requirements,

"that the proposed corporate name has been approved by each such licensing authority if required by the rules or regulations of the licensing authority." Therefore, when the executive director takes such action, he is acting "in the course of his employment." Further, the executive director is attempting to influence the Secretary of State, a member of the executive branch, to take an action, refuse to grant certain types of names for professional corporations. Therefore, in such instances, the executive director is a "lobbyist" as defined in Section 105.470.1(3).

Your next example involves an administrator of a state agency asking the Secretary of State to compile a list of all new corporations on a periodic basis for use by the agency. Assuming such information is necessary for the agency in performing its normal duties, the request is made in the course of the administrator's employment. Further, the request is an attempt to influence the Secretary of State, a member of the executive branch, to take an action, compile a list of all new corporations on a periodic basis. Therefore, in this example, the administrator is a "lobbyist" as defined by Section 105.470.1(3).

Your next example involves a request by someone in the Governor's office directed to an executive agency to delay implementation of a proposed regulation. We assume the person in the Governor's office is acting in the course of his employment. The request is an attempt to influence an executive agency to take an action, delay implementation of a proposed regulation. Therefore, in this example, the person in the Governor's office is a "lobbyist" as defined by Section 105.470.1(3).

Question 2: What is an administrative agency as referred to in Section 105.483(3)?

Section 105.483(3) provides:

> 105.483. Each of the following persons shall be required to file a financial interest statement:
>
> * * *
>
> (3) The head of each department, division and administrative agency of state government, and . . . .
>
> * * *

"When the legislature enacts a statute referring to terms which have had other judicial or legislative meaning attached to them, the legislature is presumed to have acted with knowledge of that judicial or legislative action." Citizens Electric Corporation v. Director of Department of Revenue, 766 S.W.2d 450, 452 (Mo. banc 1989). Looking to the Administrative Procedure Act, Section 536.010(1), RSMo 1986, defines "agency" as:

> **536.010. Definitions.**--For the purpose of this chapter:
>
> (1) **"Agency"** means any administrative officer or body existing under the constitution or by law and authorized by law or the constitution to make rules or to adjudicate contested cases;
>
> * * *

"Contested case" is defined in Section 536.010(2), RSMo 1986, as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." A rule, as defined in Section 536.010(4), RSMo 1986, is "each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. . . ."

Your first example concerns the Administrative Hearing Commission. You ask if it is an administrative agency, and, if so, which Commissioner is considered head of the agency. Section 621.045, RSMo 1986, requires the Administrative Hearing Commission to conduct hearings and make findings of fact and conclusions of law in cases where a license issued by any of several agencies is revoked or suspended or an agency refuses to allow an applicant to sit for examination or to be licensed. In addition, Section 621.198, RSMo 1986, authorizes the Commission to make rules of procedure for conduct of proceedings before it. Therefore, as defined by Section 536.010(1), RSMo 1986, the Administrative Hearing Commission is an administrative agency.

As to the second part of your question asking who is considered the head of the agency, Chapter 621 does not provide for a Commissioner to be designated as head of the agency. By statute, the powers and duties of the Commissioners are equal. Sections 621.015 and 621.035, RSMo 1986. In State ex rel. Public Service Commission v. Roach, 256 Mo. 669, 165 S.W. 703 (1914), the Missouri Supreme Court addressed the question of who

was the "head" of the Public Service Commission. The Court opined:

> . . . this act creates the Commission, and confers upon it certain powers and authorities too numerous to mention. . . .
>
> . . . if the Commission itself is a head of a department, bureau, or institution, then, by parity of reasoning, it seems to me that each member thereof, under a liberal construction of the statute in the light of the vast powers they possess, and duties required to be performed by them, should likewise be held to be the heads of a department, bureau or institution. [Emphasis added.]

Id., at 706. Following the reasoning in that case relating to the Public Service Commission, we conclude each Commissioner of the Administrative Hearing Commission is considered the head of the administrative agency for purposes of Section 105.483(3).

Your next example concerns whether the Commissioner of Securities is the head of an administrative agency. The Commissioner of Securities acts under the direction of the Secretary of State, as provided in Section 409.406, RSMo 1986. Chapter 409 sets out the powers and duties of the Commissioner. Under Section 409.413, RSMo 1986, the Commissioner is authorized to make rules; therefore, since an officer can be an agency under the definition contained in Section 536.010(1), RSMo 1986, the Commissioner of Securities is an agency head under that definition. Likewise, we conclude the Commissioner is the head of an administrative agency under Section 105.483(3).

Your next example concerns the Public Service Commission. Because the Commission is empowered to conduct hearings (Section 386.390, RSMo 1986) and to make rules (Section 386.410, RSMo 1986), it is an administrative agency as defined in Section 536.010(1), RSMo 1986, and for purposes of Section 105.483(3). Pursuant to State ex rel. Public Service Commission v. Roach, supra, each member of the Commission is considered the head of an agency.

Your final example involves the Commission on Human Rights. Because the Commission is empowered to conduct hearings (Section 213.075, RSMo 1986) and to promulgate rules (Section 213.030, RSMo 1986), it is an administrative agency as defined in Section 536.010(1), RSMo 1986, and for purposes of Section

105.483(3). Each member of the Commission is considered the head of an agency. State ex rel. Public Service Commission v. Roach, supra.

Question 3: Who makes a "binding decision" as referred to in Section 105.483(5)?

Section 105.483(5) provides:

> Section 105.483. Each of the following persons shall be required to file a financial interest statement:
>
> * * *
>
> (5) Any officer or employee of the state who has the direct administrative and operating authority to approve, disapprove or make binding decisions for any department, division or administrative agency of state government. Each statewide elected official and the director of each department, division, commission, agency, and board of regents or curators of a public institution of higher education, shall designate the persons required to report pursuant to this subdivision;
>
> * * *

Your specific examples under this question include decisions made by a corporations clerk in the Secretary of State's Office, a branch office employee of the Department of Revenue, an assistant attorney general or other agency attorney, and an executive director of a professional registration board. We cannot opine on whether these persons make binding decisions requiring them to file a financial interest statement since Section 105.483(5) requires "[e]ach statewide elected official and the director of each department, division, commission, agency, and board of regents or curators of a public institution of higher education, shall designate the persons required to report pursuant to this subdivision."

Question 4: What is a "binding decision" as referred to in Section 105.483(7)?

Subsection 7 of Section 105.483 requires a financial interest statement be filed by:

> (7) Any officer or employee of any political subdivision who has the direct administrative and operating authority, to approve, disapprove or make binding decisions for the political subdivision including decisions for the political subdivision including decisions relating to the issuing of licenses and permits. Each governing body of a political subdivision or special district shall designate those officers or employees who are required to report pursuant to this subdivision; except that this subdivision shall not apply to such political subdivisions which have an annual general operating receipts of less than ten million dollars, or to school districts with an annual operating budget of less than twenty million dollars;

You refer to an example involving an employee for the Recorder of Deeds. However, we cannot opine on your example concerning an employee for a Recorder of Deeds, since Section 105.483(7) requires "[e]ach governing body of a political subdivision or special district shall designate those officers or employees who are required to report pursuant to this subdivision."

As a subparagraph to your fourth question, you ask whether the phrase "including decisions . . . relating to the issuing of licenses and permits" acts to limit or expand the meaning of making "binding decisions." [Emphasis added.] Although the meaning of the word "including" may vary according to its context in a statute, it is generally considered to be a word of enlargement rather than one of limitation. Kieffer v. Kieffer, 590 S.W.2d 915, 918 (Mo. banc 1979). In the context of Section 105.483(7), we perceive the use of the word "including" as enlarging the possible decisionmakers subject to the financial disclosure requirement.

> Question 5: What does "enter into any contract" mean in the context of Section 105.483(6)? For example, when a state agency secretary orders extra clerical supplies for a small amount of money, such as twenty dollars or less, is that entering into a contract to purchase? Must that secretary file a financial interest statement?

Section 105.483(6) provides:

> 105.483. Each of the following persons shall be required to file a financial interest statement:
>
> * * *
>
> (6) Any officer or employee of the state who has the authority to authorize or enter into any contract on behalf of the state or a department, division or administrative agency of the state or who is empowered to adopt a rule or regulation for the department, division or administrative agency or who participates in or votes on the adoption of any such rule or regulation, other than rules and regulations governing the internal affairs of the department, division or administrative agency; [Emphasis added.]
>
> * * *

Missouri courts have recognized that the elements of a "contract" include parties competent to contract, a subject matter, a legal consideration, mutuality of agreement and mutuality of obligation. Gillen v. Bayfield, 329 Mo. 681, 46 S.W.2d 571, 574-575 (1931).

Chapter 34, RSMo, sets out the requirements for state purchases. Section 34.030, RSMo 1986, provides that "[t]he commissioner of administration shall purchase all supplies for all departments of the state, except as in this chapter otherwise provided." Section 34.100.1, RSMo 1986, grants the commissioner of administration "power to authorize any department to purchase direct any supplies which in his judgment can best be purchased direct by such department." Any purchase or order made by a state agency or department in a manner contrary to the provisions of Chapter 34 or rules and regulations promulgated thereunder "shall be void and of no effect." Section 34.150, RSMo 1986. Further, "[t]he head of such department or agency shall be personally liable for the costs of such order or contract and, if already paid for out of state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor." Section 34.150, RSMo 1986. Therefore, in your example, the secretary purchasing office supplies would not be required to file a financial interest statement pursuant to Section 105.483(6) unless the secretary had authority under the provisions of Chapter 34 to make such a purchase.

Question 6: What does "participates in . . . the adoption of any such rule or regulation" mean in Section 105.483(6)?

As set out above, Section 105.483(6) additionally requires filing of a financial interest statement by "any officer or employee of the state . . . who is empowered to adopt a rule or regulation for the department, division or administrative agency or who participates in or votes on the adoption of any such rule or regulation, other than rules and regulations governing the internal affairs of the department, division or administrative agency." [Emphasis added.]

Along with your question, you cite an example of the Commissioner of Securities circulating a draft securities registration rule to his investigators for their comments. It is then asked if an investigator "participates" in the adoption of the rule if: (1) his comments result in a change in the rule; (2) he assists in drafting the rule; or (3) his comments do not result in a change in the rule.

"Participate" is defined in Webster's New World Dictionary, Second College Edition, as "to have or take a part or share with others (in some activity, enterprise, etc.)." [Emphasis in original.] In each of the examples, the investigator is participating in the rulemaking process. We must infer that the legislature intended the words "participates in" to have some meaning other than "votes on;" otherwise, the language would not have been included. Therefore, we conclude that in each of the examples, the investigator participates in the adoption of the rule or regulation by providing additional matters for consideration by the Commissioner before the rule or regulation is adopted.

Question 7: In the Section 105.483(8) reference to officers and employees of a political subdivision having authority to enter into contracts:

A. Is an employee of a county clerk's office entering into a contract if he purchases a small amount of clerical supplies?

B. If a cook in each school in a school district is authorized to purchase food, is that entering into a contract?

Section 105.483(8) requires filing of a financial interest statement by:

> (8) Any officer or employee of any political subdivision who has the authority to authorize or enter into any contract on behalf of the political subdivision or who is empowered to adopt a rule or regulation for the political subdivision, or who participates in or votes on the adoption of any such rule or regulation, other than rules and regulations governing the internal affairs of the political subdivision; except that this subdivision shall not apply to such political subdivisions which have an annual general operating receipts of less than twenty million dollars.

This subsection, like Section 105.483(6) discussed in Question 5 above, does not include any restriction as to dollar amount on the contract. Therefore, in both of the examples, so long as the employee is authorized to agree to make the purchases described, he is entering into a contract on behalf of the political subdivision and is subject to the financial interest statement filing requirement if all other requirements of this subsection are met.

> Question 8: In the Section 105.483(8) reference to officers and employees of a political subdivision participating in the adoption of rules and regulations, if the manager of a city-owned swimming pool creates posted rules for the conduct of swimmers, must that manager file a financial interest statement?

As set out above, Section 105.483(8) requires filing of a financial interest statement by "[a]ny officer or employee of any political subdivision . . . who is empowered to adopt a rule or regulation for the political subdivision . . . ." If the manager of the pool is empowered to adopt the rules he has posted, then he is required to file the financial interest statement.

> Question 9: "Special districts" are not mentioned except in the second sentence of Section 105.483(7). They are not mentioned in the first sentence of Section 105.483(7) and are not mentioned at all in Section 105.483(8). Does this mean that "special districts" are not to be considered as "political subdivisions" other than as stated in this limited context or should "special districts" be considered

as "political subdivisions" wherever that term is mentioned?

Section 105.483 does not define "political subdivision." Section 105.145.1(2), RSMo 1986, defines a "political subdivision" as "any agency or unit of this state, except counties and school districts, which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied." It would appear, initially, that this definition, set out in the same chapter as Section 105.483 would apply. "When the legislature enacts a statute referring to terms which have had other judicial or legislative meaning attached to them, the legislature is presumed to have acted with knowledge of that judicial or legislative action." Citizens Electric Corporation v. Director of Department of Revenue, supra. However, the definition contained in Section 105.145, RSMo 1986, exempts school districts. Section 105.483 specifically refers to the applicability of this section to school districts by creating an exemption for particular districts with an annual operating budget of less than twenty million dollars. Section 105.483(2) and (7). "[I]t is presumed that the legislature does not enact meaningless provisions." Bartley v. Special School District of St. Louis County, 649 S.W.2d 864, 867 (Mo. banc 1983). Therefore, the legislature could not have intended to define "political subdivision" in the context of Section 105.483 using the definition set out in Section 105.145, RSMo 1986.

Article X, Section 15 of the Missouri Constitution defines political subdivisions as follows:

> **Section 15. Definition of "other political subdivision".** The term "other political subdivision," as used in this article, shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax."

This definition is more compatible with the intent of the legislature in enacting Section 105.483. Under this definition, any special district with taxing power would be considered a "political subdivision." Initially, then, the reference to a "special district" in Section 105.483(7) would appear to be unnecessary. "It is well established, however, that the presumption is that the legislature did not intend for any part of a statute to be without meaning or effect." Stiffelman v. Abrams, 655 S.W.2d 522, 531 (Mo. banc 1983). Therefore, the

use of the phrase "special district" must be presumed to refer to any special district not included in the definition of "political subdivision," i.e., a special district without taxing power. For example, a soil and water conservation district established pursuant to Sections 278.060 to 278.155, RSMo 1986, is a special district without taxing power.

The inclusion of special districts in the second sentence of Section 105.483(7) must be read in harmony with the first sentence of that subsection. Therefore, any officer or employee of a special district without taxing power who has the direct administrative and operating authority to approve, disapprove or make binding decisions for the district is required to file a financial interest statement.

Question 10: Do candidates for a judgeship file a financial interest statement? If so, with whom do they file, the Secretary of State or the Commission on Retirement, Removal and Discipline? Are candidates for judgeships state elected officials or local elected officials?

Section 105.483 provides in pertinent part:

> 105.483. Each of the following persons shall be required to file a financial interest statement:
>
> (1) Judges of a court of law;
>
> (2) Persons holding an elective office of the state or a political subdivision, whether by election or appointment, and candidates for elective office, except that, this subdivision shall not apply to elective office in political subdivisions other than school districts, with an annual budget of less than ten million dollars, or to school districts with an annual operating budget of less than twenty million dollars;
>
> * * *

Section 105.489 provides as follows:

> 105.489. The financial interest statements required to be filed pursuant to the provisions of this act shall be filed

> with the appropriate filing officer or officers. For the purpose of this act, the term "filing officer" is defined as:
>
> (1) In the case of state elected officials and candidates for such office, and all other state officials and employees, the filing officer is the secretary of state;
>
> (2) In the case of judges of courts of law, the filing officer shall be the commission on retirement, removal and discipline created by article V, section 24 of the constitution. Financial interest statements filed by judges shall be made available as may be provided by supreme court rule;
>
> (3) In the case of persons holding elective office in any political subdivision and candidates for such offices, and in the case of all other officers or employees of a political subdivision, the filing officer shall be the election authority for the political subdivision in which the person holds office or is a candidate for office. For the purpose of this section, "election authority" means a board of election commissioners in a city or county having such a board and means the county clerk in all other counties;
>
> * * *

Sections 105.483 and 105.489 distinguish judges from state elected officials and persons holding elective office in political subdivisions since each category of persons is addressed independently in a separate subsection. As a result, candidates for judgeships cannot be considered as candidates for state elective office or for elective office in political subdivisions. In examining the language used in these sections and considering the plain meaning of this language, there is no requirement that candidates for a judgeship file a financial interest statement. Having concluded there is no such filing requirement for judicial candidates, it is unnecessary to address the remaining aspects of your question numbered 10.

Question 11: What is the meaning of "annual general operating receipts" in Section 105.483(7)? Does the term "annual budget" in Section 105.483(2) differ from the term "annual general operating receipts" in Section 105.483(7)?

Several subsections of Section 105.483 are involved in answering this question:

> Section 105.483. Each of the following persons shall be required to file a financial interest statement:
>
> * * *
>
> (2) Persons holding an elective office of the state or a political subdivision, whether by election or appointment, and candidates for elective office, except that, this subdivision shall not apply to elective office in political subdivisions other than school districts, with an annual budget of less than ten million dollars, or to school districts with an annual operating budget of less than twenty million dollars;
>
> * * *
>
> (7) Any officer or employee of any political subdivision who has the direct administrative and operating authority, to approve, disapprove or make binding decisions for the political subdivision . . . ; except that this subdivision shall not apply to such political subdivisions which have an annual general operating receipts of less than ten million dollars, or to school districts with an annual operating budget of less than twenty million dollars;
>
> (8) Any officer or employee of any political subdivision who has the authority to authorize or enter into any contract on behalf of the political subdivision or who is empowered to adopt a rule or regulation for the political subdivision . . . ; except that this subdivision shall not

> apply to such political subdivisions which have an annual general operating receipts of less than twenty million dollars. [Emphasis added.]

In interpreting the meaning of these underscored terms, consideration must be given to "a well settled rule of statutory construction that where different language is used in the same connection in different parts of a statute it is presumed that the Legislature intended a different meaning and effect." Morgan v. Jewell Const. Co., 230 Mo. App. 425, 91 S.W.2d 638, 640 (1936). Therefore, the terms "annual budget," "annual operating budget" and "annual general operating receipts" must have different meanings.

> [T]he word "budget" has a well-recognized general meaning. As applied to governments or governmental units, a "budget" is a plan or method by means of which the expenditures and revenues are so controlled for a definite period, by some budgetary authority, as to effect a balance between income and expenditures.

Graves v. Purcell, 337 Mo. 574, 85 S.W.2d 543, 548 (Mo. banc 1935). See also 12 C.J.S. Budget. Section 67.010, RSMo 1986, requires each political subdivision to prepare an annual budget, except for certain political subdivisions required to prepare an annual budget by other statutory sections. Pursuant to this section, an annual budget shall include:

> **67.010. Political subdivisions to prepare annual budget--contents--expenditures not to exceed revenues.**--
> 1. . . . . The annual budget shall present a complete financial plan for the ensuing budget year, and shall include at least the following information:
>
> * * *
>
> (2) Estimated revenues to be received from all sources for the budget year . . . ;
>
> (3) Proposed expenditures for each department, office, commission, and other classification for the budget year . . . ;

> (4) The amount required for the payment of interest, amortization, and redemption charges on the debt of the political subdivision;
>
> * * *

Therefore, the "annual budget" referred to in Section 105.483(2) includes the full financial plan for the political subdivision, meaning all estimated revenues and proposed expenditures - for general funds and special purpose funds - and debt service.

An "annual operating budget," as referred to in Sections 105.483(2) and (7) differs from the "annual budget." Webster's New World Dictionary, Second College Edition, defines "operate" as "to be in action so as to produce an effect; act; function; work." Similarly, Black's Law Dictionary, Sixth Edition, defines "operating expenses" as "[e]xpenses incurred in the course of ordinary activities of an entity." Therefore, the "annual operating budget" would include those revenues and expenditures involved in the actual day to day work of the school district, meaning all general and special purpose funds, except debt service.

Sections 105.483(7) and (8) refer to "annual general operating receipts" of a political subdivision. "Receipts" has been defined as "that which is received; that which comes in, in distinction from what is expended, paid out, sent away, and the like." 75 C.J.S. Receipt. Webster's New World Dictionary, Second College Edition, defines "general" as "of, for, or from the whole or all; not particular nor local." As noted previously, the same source defines "operate" as "to be in action so as to produce an effect; act; function; work." Therefore, we conclude that "annual general operating receipts" refers to total receipts minus those receipts derived for special purpose funds.

> Question 12: In determining "annual general operating receipts" and "annual budget," is income that is produced by the ownership of a political subdivision's electric plant, water treatment plant or hospital, for example, included in such a budget? If not, what are the distinctions between which types of revenue-generating services should be included and which types should not be?

As discussed in the answer to Question 11, "budget" and "general operating receipts" have different meanings. An annual budget reflects all estimated revenues and proposed

expenditures, for general funds and special purpose funds, including debt service, and, therefore, all sources of revenue including revenue of an electric plant, water treatment plant or hospital, would be included. However, general operating receipts would include only those receipts not derived for special purpose funds. Therefore, receipts of a special purpose fund such as for an electric plant, water treatment plant or hospital would not be included as general operating receipts.

> Question 13: Are non-compensated members of state boards and commissions (as well as local boards and commissions) considered officers or employees under Section 105.483(5), (6), (7) and (8)? What is a definition of officer?

Section 105.483 does not define "officer." Courts have recognized:

> It is not possible to define the words "public office or public officer." The cases are determined from the particular facts, including a consideration of the intention and subject-matter of the enactment of the statute or the adoption of the constitutional provision.

State ex rel. Scobee v. Meriwether, 200 S.W.2d 340, 341 (Mo. banc 1947), quoting State ex inf. McKittrick v. Bode, 342 Mo. 162, 113 S.W.2d 805, 806 (1938). In determining whether one is a public officer, a delegation of some part of sovereign power is an important factor. Kirby v. Nolte, 349 Mo. 1015, 164 S.W.2d 1, 8 (Mo. banc 1942). As the courts have addressed the question of who is an officer, whether the individual receives compensation has not been a factor for consideration. Even in the absence of compensation, members of state or local boards and commissions are "officers" if they are invested with some portion of the sovereign functions of government.

WHAT TIME PERIOD IS COVERED BY THE FINANCIAL INTEREST STATEMENT AND WHEN MUST DISCLOSURE BE MADE?

> Question 14: Section 105.487 provides when a financial interest statement shall be filed. The majority are filed between April 15 and May 1 each year. However, the year covered by the statement is not defined as when it begins and ends. Is it a calendar year or is it the year between April 15 and April 14?

Section 105.487 provides:

> The financial interest statements shall be filed at the following times, but no person is required to file more than one financial interest statement in any calendar year:
>
> (1) Each candidate for elective office shall file a financial interest statement no later than the forty-fifth day after the last day for filing for the election at which he seeks nomination or election, and the statement shall be for the twelve months prior to the closing date, except that in the event an individual does not become a candidate until later than the forty-fifth day after the last day for filing for election, the statement shall be filed within ten days of his becoming a candidate. An individual required to file a financial interest statement because of his candidacy for office prior to a primary election in accordance with this section is also required to amend such statement within seven days prior to the following general election to reflect any changes in financial interest during the interim. The appropriate election authority shall provide to the candidate at the time of filing for election written notice of the candidates' obligation to file under this act and the candidate shall sign a statement acknowledging receipt of such notice;
>
> (2) Each person appointed to office and each official or employee described in section 1 of this act who is not otherwise covered in this subsection shall file the statement within thirty days of such appointment or employment;
>
> (3) Every other person required by this act to file a financial interest statement shall file the statement annually not earlier than the fifteenth day of April but not later than the first day of May;

> (4) The deadline for filing any statement required by this act shall be 5:00 p.m. of the last day designated for filing the statement. When the last day of filing falls on a Saturday or Sunday or on an official state holiday, the deadline for filing is extended to 5:00 p.m. on the next day which is not a Saturday or Sunday or official holiday. Any statement required within a specified time shall be deemed to be timely filed if it is postmarked not later than midnight of the day previous to the last day designated for filing the statement.

We assume your question relates to subsection 3 of Section 105.487 since you reference the filing period between April 15 and May 1. Although this subsection does not specify the reporting period to be covered in the financial interest statement, several references in Section 105.485 concerning contents of the statement provide guidance. For example, Section 105.485.2(4) requires filing of the name and address of the person furnishing or receiving consideration for a transfer of real property "if the property was transferred during the preceding calendar year." [Emphasis added.] Section 105.485.2(7) requires filing of the name and address of certain not-for-profit corporations and associations if the person filing the statement "was an officer, director, employee or trustee at any time during the preceding calendar year." [Emphasis added.] Based on these references, for purposes of subsection 3 of Section 105.487, we conclude that the filing period covered by the financial interest statement is the calendar year preceding filing.

> Question 15: Section 105.485.2 states: "Each person required to file a financial interest statement shall file the following information for himself, his spouse and dependent children in his custody for the twelve months preceding the date of filing the statement . . . ." Does the underlined phrase modify "custody" or "financial interest statement"?

The doctrine of the "last antecedent" is a rule of statutory construction holding that "relative and qualifying words, phrases or clauses are to be applied to the words or phrase immediately preceding and are not to be construed as extending to or including others more remote." Elliott v. James Patrick Hauling, Incorporated, 490 S.W.2d 284, 287 (Mo.

App. 1973). This rule leads to the conclusion that the underlined phrase modifies "custody."

As noted above, there are several references in other subsections of Section 105.485 referring to filing requirements for the preceding calendar year. Based upon this entire section, if the reference to the "twelve months preceding the date of filing the statement" modifies the information to be filed in the financial interest statement and not custody of dependent children, then it would conflict with the provisions referring to a calendar year. All statutes applicable to the same subject should be harmonized to preserve the integrity of both. Conrad v. Bowers, 533 S.W.2d 614, 622 (Mo. App. 1975). Therefore, we conclude that the reference to the "twelve months preceding the date of filing the statement" modifies custody.

> Question 16: When is the first report due? Since the law does not go into effect until January 1, 1991, can it request information for a time period before that time, that is, for the calendar year 1990?

Article I, Section 13 of the Missouri Constitution provides that no law retrospective in its operation shall be enacted. Danaher v. Smith, 666 S.W.2d 452, 455 (Mo. App. 1984). As a general rule, statutes are presumed to operate prospectively "unless the legislative intent that they be given retroactive operation clearly appears from the express language of the act or by necessary or unavoidable implication." Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 34 (Mo. banc 1982), appeal dismissed, 459 U.S. 1094, 103 S.Ct. 711, 74 L.Ed.2d 942 (1983). Since this statute states it is to become effective January 1, 1991, there is no basis to interpret a retroactive operation was intended. We conclude that the first filings of financial interest statements will be due on the dates specified by statute in 1991.

"[A] statute is not retroactive merely because it draws upon antecedent facts for its operation." Home Indemnity Co. v. State of Missouri, 78 F.2d 391, 394 (8th Cir. 1935). Therefore, a financial interest statement required to be filed in 1991 may be required to include information related to a time period before January 1, 1991, such as information for calendar year 1990.

> Question 17: If someone who would normally be required to report resigns his position before April 15, 1991, does he still have to file a report? If so, would he have to report if he resigned his position before January 1, 1991?

Section 105.483 in subsections (1) through (8) lists the persons required to file a financial interest statement. In each instance, persons are referred to by the positions they hold or the authority they have. All references use present tense language suggesting that the individuals are holding those positions and possessing the authority at the time they are required to file the financial interest statement. Furthermore, the statute makes no reference to a filing requirement for persons in the circumstances contained in your question. Therefore, based upon the plain meaning of the language in Section 105.483, we conclude there is no requirement for filing a financial interest statement for persons who have resigned their positions prior to the time for filing.

WHAT MUST BE DISCLOSED?

Question 18: What is the definition of "income" as referred to in Section 105.485.2(1)? Is there a difference between "income" and "earned income" as referred to in Section 105.485.2(3)?

Pursuant to Section 105.485.2,

> 2. Each person required to file a financial interest statement shall file the following information for himself, his spouse and dependent children in his custody for the twelve months preceding the date of filing the statement . . .
>
> (1) The name and address of each of the employers of such person from whom income of one thousand dollars or more is received during the year covered by the statement;
>
> * * *
>
> (3) The name and address of any other source not reported pursuant to subdivisions (1) and (2) and subdivisions (4) through (9) of this subsection from which such person received one thousand dollars or more of earned income during the year covered by the statement, including, but not limited to, any income otherwise required to be reported on any tax return such person is required by law to file; [Emphasis added.]
>
> * * *

Missouri statutes do not define "income" and "earned income" for purposes of Section 105.485. For guidance, we look to definitions found in the United States Internal Revenue Code. "Earned income" is defined in 26 U.S.C.A. Section 32(c)(2)(A) as "(i) wages, salaries, tips, and other employee compensation, plus (ii) the amount of the taxpayer's net earnings from self-employment for the taxable year. . . . "

The reference in Section 105.485.2(1) to "income" received from employers appears to be what is defined by the I.R.C. as "earned income." However, the later reference to "earned income" in Section 105.485.2(3) as "including, but not limited to, any income otherwise required to be reported on any tax return such person is required by law to file" does not comport with the I.R.C. definition. As noted previously, the word "including" is generally considered to be a word of enlargement rather than one of limitation. Kieffer v. Kieffer, supra, 590 S.W.2d at 918. Income otherwise required to be reported on a tax return includes, but is not limited to, gains derived from dealings in property, interest, rents, royalties, dividends and annuities. See 26 U.S.C.A. Section 61(a).

Therefore, we conclude that the reference to "income" in Section 105.485.2(1) refers to wages, salaries and other employee compensation derived from one's employer. The reference to "earned income" in Section 105.485.2(3) includes any income required to be reported on a tax return.

Question 19: How is the ten thousand dollar value referred to in Section 105.485.2(4) and (5) determined?

A. For a piece of real property, is it the purchase price, appraised fair market value, assessor's valuation or possible selling price? If the appraisal value is used, must the property be appraised for each reporting period?

B. As to the value of stock and other equity interests, when is it valued? At the beginning of the year, the end, or at its highest value during the year? And if the equity interest is held in a mutual fund, how is it valued? Or if the equity interest is a pension fund, how is that valued?

> C. For example, a Missouri state employee may have deferred nine thousand dollars of his compensation into PEBSCO with five thousand dollars into a mutual fund and four thousand into another equity. Each earns interest and together they value over ten thousand dollars, but not separately. Are they reported?

Sections 105.485.2(4) and (5) provide the financial interest statement shall include the following information:

> (4) The location by county, the subclassification for property tax assessment purposes, the approximate size and a description of the major improvements and use for each parcel of real property in the state, other than the individual's personal residence, having a fair market value of ten thousand dollars or more in which such person held a vested interest including a lease-hold for a term of ten years or longer, and, if the property was transferred during the preceding calendar year, the name and address of the person furnishing or receiving consideration for such transfer;
>
> (5) The name and address of any entity in which such person owned stock, bonds or other equity interest with a value in excess of ten thousand dollars; except that, if the entity is a corporation listed on a regulated stock exchange, only the name of the corporation need be listed; [Emphasis added.]
>
> * * *

According to subsection (4), the value of real property should be determined by "fair market value." As Missouri courts have defined the term, "[f]air market value is essentially the price the property would bring by sale to a willing owner from a buyer who is also under no compulsion to buy." Larabee v. City of Kansas City, 697 S.W.2d 177, 182 (Mo. App. 1985). Section 105.485.2(4) does not explain the procedure for determining fair market value. However, courts have recognized that "[a]n owner of property is qualified to give his opinion as to the value of his own property even though he is not a real estate expert."

Klein v. General Electric Company, 714 S.W.2d 896, 904 (Mo. App. 1986). "This qualification of the landowner rests on the assumption that an owner is familiar with his property and its actual and potential uses." Id. No language in Section 105.485.2(4) imposes a requirement that an appraisal of the property be performed. However, while the owner may express an opinion of the value of his property, we note the provision in Section 105.492.4 (Section 6.4 of House Bills Nos. 1650 and 1565) that "[a]ny person who purposefully misrepresents or omits any facts required to be contained in any financial interest statement filed as required by sections 1 to 10 of this act [Sections 105.483 to 105.498] shall be guilty of a class B misdemeanor."

As to valuation of stock,

> [T]here is no universally infallible index of fair market value. All valuation is necessarily an approximation. Where, however, the property to be valued consists of securities traded on a stock exchange, the general rule is that the average exchange price quoted on the valuation date furnishes the most accurate, as well as the most readily ascertainable, measure of fair market value.

Amerada Hess Corporation v. Commissioner of Internal Revenue, 517 F.2d 75, 83 (3rd Cir. 1975). Section 105.485.2(5) requires the filing of "[t]he name and address of any entity in which such person owned stock." [Emphasis added.] The use of the past tense reflects the intent that any stock owned by the person required to file a financial interest statement at any time in the reporting year must be disclosed if its value exceeded $10,000. Consequently, we conclude that any owned stock reaching a value of $10,000 at any time in the filing year must be disclosed.

The next part of your question concerns how a mutual fund is to be valued. Black's Law Dictionary, Sixth Edition, defines a mutual fund as follows:

> A fund managed by an investment company in which money is raised through the sale of stock and subsequently invested in publicly traded securities. The investment performance of the mutual fund depends on the performance of the underlying investments.

Therefore, the value of an investment in a mutual fund should be determined in the same way stocks are valued. If at any time during the reporting year the value of an investment in a mutual fund exceeds $10,000, it should be reported on the financial interest statement.

Your next example concerns a pension fund and how such an interest should be valued. Because your question does not include information regarding the type of pension plan or the ownership interest, we cannot address your question as it relates to a pension plan.

Your next example concerns a Missouri state employee who has deferred nine thousand dollars of his compensation into PEBSCO with five thousand dollars into a mutual fund and four thousand into another equity. As you state in your example, each has earned interest (or appreciated in value) and together they value over ten thousand dollars, but not separately. You ask if they should be reported. We presume your question relates only to deferred compensation which the employee has designated to be invested in mutual funds.

Black's Law Dictionary, Sixth Edition, defines deferred compensation as follows:

> Compensation that will be taxed when received and not when earned. . . . Such contributions will not be taxed to the employee until the funds are made available or distributed to the employee (e.g., upon retirement).

Section 105.910, RSMo 1986, provides for establishment of the "Missouri State Public Employees Deferred Compensation Fund." Section 105.915, RSMo 1986, provides in part:

> **105.915. Office of administration to administer plan--written agreement required--approved investments.**--1. Subject to the approval of Missouri state public employees deferred compensation commission, the office of administration shall establish and administer a deferred compensation plan for the employees of the state of Missouri. Participation in such plan shall be by a specific written agreement between such employees and the state which shall provide for the deferral of such amount of compensation as requested

> by the employee. Participating employees must authorize that such deferrals be made from their wages for the purpose of participation in such program.
>
> 2. Notwithstanding any other provision of this code, funds held for the state by the Missouri public employees deferred compensation commission pursuant to written deferred compensation agreement between the state and participating employees may be invested, in such investments as are deemed appropriate by the office of administration and approved by the commission, including, but not limited to, life insurance or annuity contracts or mutual funds. It is further provided that all such insurance, annuities, mutual funds, or other such investment products to be offered pursuant to this plan shall have been reviewed and selected by the commission based on a competitive bidding process as established by such specifications and considerations as are deemed appropriate by the commission. Such investments shall not be construed to be a prohibited use of the general assets of the state.
>
> * * *

Because Missouri state employees' participation in the deferred compensation plan may involve several different types of investments, we believe value should be calculated for each individual investment. Therefore, in your example, the person filing a financial interest statement would not report his deferred compensation because no one investment has a value of $10,000.[1]

---

[1]We recognize that a state employee participating in the deferred compensation plan is not the registered owner of shares of the mutual fund or funds in which the employee has selected to invest. As stated in the State of Missouri, Deferred Compensation Plan for Public Employees, Restated Plan Document, Section 6.03, "The rights of the PARTICIPANT (state employee) created by this PLAN shall be those of a general creditor of the

(Footnote Continued)

> Question 20: Section 105.485.2(3) requires disclosure of the name and address of any other source of earned income of one thousand dollars or more. Does this require persons such as doctors, lawyers, accountants and other business and professional people who are members of boards or commissions to report the names and addresses of their clients who may pay an individual fee of over one thousand dollars directly to the reporting person?

As discussed in answer to Question 18, Section 105.485.2(3) requires the financial interest statement to report the name and address of any other source of earned income including "any income otherwise required to be reported on any tax return such person is required by law to file." This information is required only from sources not reported in subsections (1) and (2) and (4) through (9). Section 105.485.2(2) requires the financial interest statement to report "[t]he name and address of each sole proprietorship which he owns; [and] the name and address of each general partnership and joint venture in which he is a partner or participant. . . ." Since the clients referred to in your question will have made payment to the proprietorship or partnership and that entity has been disclosed pursuant to subsection (2), the plain language of subsection (3) does not require disclosure of individual clients.

MISCELLANEOUS QUESTIONS.

> Question 21: Where does a reporting person file if they live outside the state if they are an officer or employee of a political subdivision that is situated

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(Footnote Continued)
EMPLOYER (State of Missouri), and in an amount equal to the fair market value of the deferred account maintained with respect to the PARTICIPANT, determined as if the deferred amounts had been invested pursuant to the PARTICIPANT'S investment specification." Because the value of the employee's deferred compensation account is directly tied to the value of shares of a mutual fund or funds which the employee has selected, we consider the value attributable to each mutual fund to be ownership or an equity interest in a mutual fund for purposes of Section 105.485.2(5). The Statement of Values provided quarterly to each employee participating in the deferred compensation plan lists each mutual fund selected by the employee and the value attributable to each fund.

in more than one county? Section 105.489(4) requires a reporting person to file with the "election authority having jurisdiction for the residence of the person filing." A multi-county school district located next to the state's border may have an employee who lives in another state. Where does that person file?

Section 105.489 provides:

> 105.489. The financial interest statements required to be filed pursuant to the provisions of this act shall be filed with the appropriate filing officer or officers. For the purpose of this act, the term "filing officer" is defined as:
>
> * * *
>
> (3) In the case of . . . all other officers or employees of a political subdivision, the filing officer shall be the election authority for the political subdivision in which the person holds office . . . . For the purpose of this section, "election authority" means a board of election commissioners in a city or county having such a board and means the county clerk in all other counties;
>
> (4) If a political subdivision is situated in more than one county, the filing officer shall be the election authority having jurisdiction for the residence of the person filing.

Although Section 105.489(3) does not provide for such a situation, in determining the intent of the legislature, "the objectives of the act are to be considered, and the construction must be reasonable and logical to give meaning to the statutes." State ex rel. Rhodes v. Crouch, 621 S.W.2d 47, 49 (Mo. banc 1981). Therefore, in the event an officer or employee of a political subdivision is required to file a financial interest statement but does not reside in Missouri, the statement should be filed with the election authority having jurisdiction for the principal place of employment of the person filing.

Question 22: Section 105.491.2(1) allows a filing officer, other than the Secretary of State, to "charge a reasonable filing fee to cover the actual pro-rata cost of providing such services as approved by the secretary of state." Does this provision require the Secretary of State to approve local filing fees and does this filing fee require a popular vote in accordance with the Hancock Amendment?

Section 105.491.2 provides:

> 2. Each filing officer other than the secretary of state shall assist the secretary of state in furnishing forms to persons required to file financial statements and shall:
>
> (1) Maintain a filing system for financial statements filed with his office and preserve such statements for a period of not less than five years and may charge a reasonable filing fee to cover the actual pro-rata cost of providing such services as approved by the secretary of state;
>
> (2) Make any financial statement filed with him available for public inspection and copying within a reasonable time after filing and permit copying of any financial statement at a reasonable expense to cover the cost of such services;
>
> (3) The secretary of state and each other filing officer shall keep a public record of all persons inspecting or copying financial statements.

The plain language of Section 105.491.2(1) provides for approval by the Secretary of State of the "reasonable filing fee" which may be charged by filing officers other than the Secretary of State. This refers to local filing fees since Section 105.489(3) identifies as filing officers "the election authority for the political subdivision . . . ." Note, however, that Section 105.491.2(2) allows a filing officer to charge "a reasonable expense to cover the cost" of permitting copying of filed financial interest statements without requiring approval of the Secretary of State.

The Honorable Roy D. Blunt

We cannot opine on the second part of your question relating to whether the Hancock Amendment requires a popular vote since it has been the long-standing practice of this office not to opine on matters where related litigation is pending. Presently before the Missouri Supreme Court is a case involving the application of the Hancock Amendment to an increase in ambulance district fees without a vote of the people, George Keller, et. al. v. Marion County Ambulance District, et al., appeal pending, Missouri Supreme Court No. 72979. Because of this pending litigation, we respectfully decline to opine on the second part of your question.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Attachment

ATTACHMENT A

Under recently passed House Bills 1650 and 1565, the Secretary of State is required to create and publish financial disclosure forms with instructions for the disclosure of financial interests by certain public officials. In attempting to carry out this duty the following questions have arisen:

A. Who is covered by the law?

B. What time period is covered for the reporting period?

C. What must be disclosed?

In addition several miscellaneous questions have been raised. The following is an outline of the issues and questions raised by House Bills 1650 & 1565.

I. WHO IS COVERED BY THE LAW.

A. In section 105.470.1(3) lobbyist is defined as, "any person, including persons employed by or representing federal or state agencies and all political subdivisions thereof, *who acts in the course of his employment* . . . for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any legislative action or *any action by the executive branch or any agency or commission of state government*; . . ."

Although this section is limited by the definition of witness in section 105.470.1(5), that witness limitation appears to only cover activities involving legislation and not activities involving "action by the executive branch." And even if this limitation would apply, there is the basic issue of what type of activities are those to legally conclude that the person carrying out those activities is a lobbyist.

For example, if the Commissioner of Securities brings security fraud investigations to the attention of the Attorney General and seeks criminal prosecutions, is the Commissioner of Securities a "lobbyist"? Or what if a executive director for a professional licensing board asks the Secretary of State to refuse to grant certain types of names for professional corporations, is that lobbying? And there is the question of an administrator of a state agency attempting to have the Secretary of State compile a list of all new corporations on a periodic

basis for use by that agency. Is that influencing the taking of any action? Finally, is it lobbying if someone in the Governor's office requests an executive agency to delay the implementation of proposed regulations?

B. Section 105.482.1(3) refers to "The *head* of each department, division and *administrative agency* of state government..." as having to file a financial disclosure report.

The Reorganization Act of 1974 took all departments, boards, commissions, divisions, bureaus and other agencies and organized them into twelve departments of state government (including the office of administration). These departments, in turn, filed their organization plans with the Secretary of State, the Revisor of Statutes, and the Commissioner of Administration indicating which divisions they had in their departments. Should that filing act as a definition of "division" under H.B. 1650 and 1565? Also, the term "administrative agency" was not used in the Reorganization Act. Thus, there are the question as to who works for an "administrative agency" and who is the head of such an agency?

For example, are Administrative Law Judges considered heads of an "administrative agency"? And if so, which judge is considered the head of the agency? And, is the Commissioner of Securities, whose position is defined by statute, the head of an administrative agency? Finally, what about the Public Service Commission? Are all the commissioners considered the head of an agency? The same question applies to the members of the Commission on Human Rights? Is each commissioner a head of an administrative agency?

C. Section 105.482.1(5) requires, "Any officer or employee of the state who has the direct administrative and operating authority to approve, disapprove or *make binding decisions...*", to file a financial disclosure statement.

Who makes a "binding decision"? For example does this include a decision by a corporation's clerk in the Secretary of State's Office to file or not file a new corporation or to grant the use of a corporate name? That clerk has the direct authority to decide if the Articles of Incorporation conform to law and then issue a corporate charter and further that clerk has the authority to decide if the corporate name chosen is or is not deceptively similar to another corporation's name. If it is deceptively similar, that clerk may reject the name. And there is the question of an employee of the Department of Revenue at a branch office refusing to issue a car title because there is no mileage statement provided or refusing to issue license plates because the owner can not show insurance coverage. Are these

binding decisions? Or does the decision to pursue litigation or settle a case by an Assistant Attorney General or other agency attorney (e.g. Department of Revenue or Department of Social Services) involve making a binding decision? Finally, does the decision by an executive director of a professional registration board to investigate a licensed professional require that person to file a financial disclosure form?

D. Subdivision (7) of section 105.482.1 also requires officers and employees of *any political subdivision* to file a financial report if they have the administrative and operating authority to approve, disapprove or *make binding decisions* for the political subdivision.

Thus, the same issue of who is required to file a financial interest statement arises for a political subdivision as for a state agency. For example, is an employee for the Recorder of Deeds, who refuses to record a general warranty deed because of its failure to be acknowledged correctly by a notary public, making a binding decision? Further as applies to political subdivisions, there is the additional language of, "making binding decisions for the political subdivision including decisions . . . relating to the issuing of licenses and permits." Does this additional language act to limit or expand the meaning of make binding decisions?

E. Section 105.482.1(6) requires "*Any* officer or *employee* of the state who has the authority to authorize or *enter into any contract*. . . or who is empowered to adopt a rule ... *or who participates in* or votes on *the adoption of any such rule or regulation* ..."

What does, "enter into any contract" mean? When a state agency secretary orders some extra clerical supplies for a small amount of money such as twenty dollars or less, is that entering into a contract to purchase? Must that secretary file a financial statement?

Likewise what does "participates in. . . the adoption of any such rule or regulation," mean? For example a state agency may circulate draft rules to various employees for comments. These employees may have to enforce or follow such rules. Sometimes their comments are made in writing and sometimes verbally. Do such comments, especially if they result in changes or additions to the rule, result in participating in the adoption of any such rule. Does this apply to someone who helps draft the rule? Or does it also cover any person who may have commented on the rule or submitted a memo commenting on the rule? An example of this would be the Commissioner of Securities circulating a draft securities registration rule to his investigators.

F. Subdivision (8) of section 105.482.1 also requires officer and employee of *any political subdivision* to file a financial report if they have, "the authority to . . . *enter into any contract. . . or . . . participates in . . . the adoption of any such rules and regulations*".

The same issue of who is required to file a financial interest statement arises for a political subdivision as for a state agency. For example, is an employee for County Clerk's Office entering into a contract if they purchase a small amount of clerical supplies or if cooks for each school in a school district have authority to purchase food?

An example involving the adoption of rules by a political subdivision is that of a manager of a city owned swimming pool. If that manager creates posted rules for the conduct of swimmers, must that manager file a financial disclosure statement?

G. Are officers and employees of special districts required to file financial interest statements?

Special districts are not mentioned except in the second sentence of subdivision 7 of subsection 1 of section 105.482. They are not mentioned in the first sentence nor at all in subsection 8 of subsection 1 of section 105.482. Does this mean that "special districts" are not to be considered as political subdivisions other than as stated in this limited context or should special districts be considered as political subdivisions wherever that term is mentioned? Further school districts, which are considered as special districts, appear to be considered a political subdivision by the last sentence of subdivision 7.

H. Section 105.482.4(2) provides that, "In the case of judges of courts of law, the filing officer shall be the commission . . ." whereas section 105.482.4(1) makes the Secretary of State the filing officer for, "state elected officials and candidates."

A ruling by the Cole County Circuit Court has indicated that the Commission should not be the filing officer but that the Supreme Court should decide with whom judges should file. Nevertheless, there is an issue whether *candidates* for a judgeship file a financial disclosure statement and if they do, with whom do they file? The Secretary of State or with that official designated by the Missouri Supreme Court? Although subdivision 1 of subsection 4 mentions candidates, it limits that to candidates which are candidates for "state elected officials." And subdivision 2 of subsection 4 only mentions judges and not

candidates for judges. Further, are candidates for judgeships, state elected officials or local elected officials?

I. Under section 105.482.1(7) officers and employees of political subdivisions, "which have an *annual general operating receipts* of less than ten million dollars" do not have to report . This same limitation applies to school districts except the limitation is twenty million dollars.

Further in section 105.482.1(2) elected officials and candidates do not have to file a financial disclosure statement if the political subdivision has, "an *annual budget* of less than ten million dollars" or twenty million for school districts.

Does the term "annual budget" as referred to in section 105.482.1(2) differ from the term "annual general operating receipts" as referred to in section 105.482.1(7)?

Finally in determining *annual general operating receipts* and/or *annual budget* is income that is produced by the ownership of a political subdivision's electric plant, water treatment plant or hospital, for example, included in such a budget? If not, what are the distinctions between which types of revenue generating services should be included and which types should not in a political subdivisions annual general operating receipts or annual budget?

J. Under section 105.482.1 subdivisions (5)(6)(7) and (8) refer to "officer or employee of the state". Many persons serve on state and local governmental boards without compensation. For example the members of the Missouri Commission on Human Rights, Missouri Advisory Council on Alcohol and Drug Abuse, State Veterans Board, Horse Racing Commission, State Lottery Commission and the Coordinating Board of Higher Education serve without compensation. As well members of St. Louis City, St. Louis County and Kansas City Board of Election Commissioners serve without pay. Are the members on these boards considered officers or employees of the state under subdivisions (5)(6)(7) and (8)? What is a definition of officer under those sections?

2. WHAT TIME PERIOD IS COVERED BY THE FINANCIAL INTEREST STATEMENT AND WHEN MUST DISCLOSURE BE MADE?

A. Section 105.482.3 provides when a financial interest statement shall be filed. The majority are filed between April 15 and May 1 each year. However, the year covered by the statement is not defined as when it begins and ends. Is it a calendar year or is it the year between April 15 and April 14?

Section 105.482.2.2 (1) & (3) provide that the period is a year with the term, "during the year covered by the statement." And subsections 105.482.2.2 (4) and (7) refer to "preceding calendar year". Subsection 105.482.2.2 (8) refers to "value per source per year".

Section 105.482.2.2 also may be interpreted as to what time period the financial statement must cover. That subsection states, "Each person required to file a financial interest statement shall file the following information for himself, his spouse and dependent children in his custody for the twelve months preceding the date of filing the statement. . ." The question here is what does this phrase modify, custody or financial interest statement? Rules of grammar would indicate custody; however, if it modifies the term "financial interest statement", then the year covered is the year preceding the date of filing the statement.

B. When is the first report due? Since the law does not go into effect until January 1, 1991, can it request information for a time period before that time, that is for the calendar year of 1990?

C. If someone, who would normally be required to report, resigns their position before April 15, 1991 do they have to report? If they do, would they have to report if they resigned their position before January 1, 1991?

3. WHAT MUST BE DISCLOSED?

A. Subdivision (1) of section 105.482.2.2 states that reporting persons must report "*income* of one thousand dollars or more" while subdivision (3) states the reporting person must report the source of "one thousand dollars or more of *earned income* during the year..."

What exactly is the definition of income? Is there a difference between "income and earned income"? The statute says earned income is, "any income otherwise required to be reported on any tax return." This definition is not stated for "income".

B. Subdivision (4) of section 105.482.2(4) states that reporting persons must report any interest they have in property, other than their personal residence, which has, "a value of ten thousand dollars or more..." Also subdivision (5) of 105.482.2

states that a reporting person must report any equity interest in an entity (stock, bonds or other equity interest) in which the value was in excess of ten thousand dollars.

How is this ten thousand dollar value arrived at? For example a state employee may own a vacation cabin at the Lake of the Ozarks. What is the value of this property? Is it the purchase price, appraised fair market value, assessor's valuation or possible selling price? If the appraisal value is used, must the property be appraised for each reporting period? When is the value made?

As to the value of stock and other equity interests, when is it valued? At the beginning of the year, the end, or at its highest value during the year? And if the equity interest is held in a mutual fund, how is it valued? Or if the equity interest is a pension fund, how is that valued? For example a Missouri state employee may have deferred nine thousand dollars of his compensation into PEBSCO with five thousand dollars into a mutual fund and four thousand into another equity. Each earns interest and together they value over ten thousand dollars, but not separately. Are they reported?

C. Subdivision 3 of section 105.482 requires disclosure of the name and address of any other source of earned income of one thousand dollars or more. Does this require reporting by persons such as doctors, lawyers, accountants and other business and professional people who have clients who may pay an individual fee of over one thousand dollars directly to the reporting person (as opposed to a professional corporation)?

4. MISCELLANEOUS QUESTIONS

In addition to the three main issues stated above there are several other questions that do not fall into those groupings. They are:

1. Where does a reporting person file if they live outside the state if they are an officer or employee of a political subdivision that is situated in more than one county? Section 105.482.4(4) requires a reporting person to file with the "election authority having jurisdiction for the residence of the person filing". A multi-county school district located next to the state's border may have an employee who lives in another state. Where does that person file?

2. Section 105.482.5.2(1) allows a filing officer, other than the secretary of state, to, "charge a reasonable filing fee to cover the actual pro-rata cost of providing such services as approved by the secretary of state." Does this provision require the secretary of state to approve local filing fees and does this filing fee require a poplar vote in accordance with the Hancock Amendment?

ST. LOUIS CITY:
STATE LEGAL EXPENSE FUND: The St. Louis Regional Convention and Sports Complex Authority created under Section 67.650, et seq., RSMo Supp. 1989, and its members are not covered by the State Legal Expense Fund, Section 105.711, RSMo.

October 26, 1990

OPINION NO. 179-90

James R. Moody, Commissioner
Office of Administration
State Capitol Building, Room 125
Jefferson City, Missouri 65101

Dear Commissioner Moody:

This opinion is in response to your questions asking:

1. In the event of a lawsuit against: (a) the members of the St. Louis Regional Convention and Sports Complex Authority individually; (b) the members of the Authority in their official capacity as members of the Authority; or (c) the Authority as an entity; can the defense of such a lawsuit be handled by the Missouri Attorney General's Office?

2. Even if the Authority, or any member thereof, is defended by private counsel and a judgment is rendered against: (a) the Authority as an entity; (b) an individual member in his official capacity; or (c) an individual member personally (but arising from his activities as an Authority member); can the judgment be paid pursuant to sections 105.711 et seq. (R.S.Mo. 1986)?

Section 105.711 as enacted by Conference Committee Substitute for House Committee Substitute for Senate Bill No. 765, 85th General Assembly, Second Regular Session (1990) provides in part:

> 105.711. Legal expense fund created--officers, employees, agencies, certain physicians covered, procedure--certain claims, limitations--funds not transferable to general revenue.--1. There is hereby created a "State Legal Expense Fund" which shall consist of moneys appropriated to the fund by the general assembly and moneys otherwise credited to such fund pursuant to section 105.716.
>
> 2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:
>
> (1) The state of Missouri, or any agency of the state, pursuant to section 537.600, RSMo;
>
> (2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions . . . upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state . . . .
>
> * * *

In interpreting the statute, the fundamental rule is to ascertain the intent of the General Assembly from the language used and to give effect to that intent. Brown Group, Inc. v. Administrative Hearing Commission, 649 S.W.2d 874, 881 (Mo. banc 1983). The plain meaning of the statutory language is to be given effect wherever possible. State ex rel. D.M. v. Hoester, 681 S.W.2d 449, 450 (Mo. banc 1984).

The language of the statute demonstrates the legislature's intent to provide coverage under the State Legal Expense Fund for the State of Missouri, its agencies, officers and employees.

The Regional Convention and Sports Complex Authority was created by Senate Committee Substitute for House Bill No. 1144, Eighty-fourth General Assembly, Second Regular Session (1988) (hereinafter sometimes referred to as "House Bill No. 1144")

which has been codified as Section 67.650 et. seq., RSMo Supp. 1989.

Section 67.650 provides as follows:

> 67.650. Regional convention and sports complex authority established.--In each city not within a county and in each first class county with a charter form of government which adjoins such city not within a county there is hereby established a joint "Regional Convention and Sports Complex Authority".

Section 67.652 provides for the Authority to consist of up to eleven commissioners. Up to three commissioners are to be appointed by the chief executive of the city and must be residents of the city; up to three commissioners are to be appointed by the chief executive of the county and must be residents of the county; and up to five commissioners, two to be residents of the county, two to be residents of the city and one to be a resident of either the city, county or "a county contiguous to the county" are to be appointed by the Governor. One of the Governor's appointees is designated as chairman. Commissioners are to be reimbursed by the Authority for necessary expenses incurred in performing their duties.

Section 67.653 lists the powers of the Authority. These include power to issue bonds to "be payable solely from the revenues and assets held by the authority." Section 67.653.1(10)(d). "In no event shall the state be liable for any deficiency or indebtedness incurred by the authority." Section 67.653.2. The Authority is required to make an annual report to the chief executives and governing bodies of the city and county and to the General Assembly. Section 67.658.

In past opinions from this office, we have concluded various entities, officers and employees are covered by the State Legal Expense Fund based on specific language in the statutes pertaining to these entities or persons. For example, in Opinion Letter No. 114-84, a copy of which is enclosed, we concluded officers and employees of the Missouri State Employees' Retirement System are covered under the Fund. Section 104.320, RSMo, expressly stated the "system shall be a body corporate and an instrumentality of the state" and Section 104.460, RSMo, expressly stated "all other employees of the system appointed by the board shall be both state employees and . . . ." In Opinion No. 34-85, a copy of which is enclosed, we concluded, depending on the precise facts of the particular

case, certain circuit clerks are covered under the Fund because of language in Section 483.083, RSMo Supp. 1984, stating "they shall be considered state employees." In Opinion Letter No. 22-87, a copy of which is enclosed, the Health and Educational Facilities Authority of the State of Missouri was held to be covered by the Fund for various reasons, including language in Section 360.085, RSMo, proclaiming the Authority "a public instrumentality of the state." Finally, in Opinion No. 112-90, a copy of which is enclosed, we determined the trustees of the Missouri Family Trust Fund are entitled to coverage under the State Legal Expense Fund because all trustees are appointed by the Governor, the scope of the trustees' activities reaches statewide and the trustees' specific duties relate to facilitating private funding for individuals eligible to receive services from the Department of Mental Health.

The statutes relating to the Regional Convention and Sports Complex Authority contain no express language identifying the Authority as a state agency or its commissioners as state officers or employees. In the absence of such language, in order to determine the intent of the legislature, we look to the title of House Bill No. 1144 as originally enacted. "The official title to a statute is a portion thereof and must be considered in construing the meaning and purpose of the statute." State v. Windmiller, 579 S.W.2d 730, 732 (Mo. App. 1979). See also State ex rel. Missouri Highway and Transportation Commission v. Appelquist, 698 S.W.2d 883, 894 (Mo. App. 1985).

The title of House Bill No. 1144 reads as follows:

> An Act to amend chapter 67, RSMo, relating to powers of political subdivisions, by adding thereto nine new sections relating to the establishment and funding of a regional convention and sports complex authority in certain areas. [Emphasis added.]

The Authority, unlike the entities addressed in the previous opinions discussed above, was established to serve a limited area of the state and serves as a joint Authority between political subdivisions. We conclude that the Authority is not an agency of the state, nor are its commissioners officers or employees of the state. Therefore, the Authority and its commissioners are not covered by the State Legal Expense Fund; in the event of a lawsuit, the defense cannot be handled by the Attorney General's office nor can the judgment be paid by the Fund.

James R. Moody, Commissioner

CONCLUSION

It is the opinion of this office that the St. Louis Regional Convention and Sports Complex Authority created under Section 67.650, et seq., RSMo Supp. 1989, and its members are not covered by the State Legal Expense Fund, Section 105.711, RSMo.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion Letter No. 114-84
Opinion No. 34-85
Opinion Letter No. 22-87
Opinion No. 112-90

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

November 29, 1990

OPINION LETTER NO. 193-90

Board of Police Commissioners
of Kansas City, Missouri
Police Department
1125 Locust Street
Kansas City, Missouri 64106-2687

Attention: Dale H. Close
Assistant Legal Advisor

Dear Board Members:

This opinion letter is in response to the resolution adopted by you seeking an opinion from this office pursuant to Section 610.027.5, RSMo. You pose the following question:

> Whether records of arrest for all persons arrested by officers of the Kansas City, Missouri Police Department in the preceding twenty-four (24) hour period, including the name and address of the arrestee, the charge or violation, the date that the individual was charged, and the court date, are open or closed records.

Section 610.100, RSMo 1986, provides:

> 610.100. Arrest records, closed, when.--If any person is arrested and not charged with an offense against the law within thirty days of his arrest, official records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records except as provided in section 610.120.

In addition, Section 610.105, RSMo 1986, provides:

> 610.105. Effect of nolle pros--dismissal--sentence suspended on

> record.--If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except as provided in section 610.120.

Section 610.010, RSMo Supp. 1989, provides the following definition:

> 610.010. Definitions.--As used in sections 610.010 to 610.030 and 610.100 to 610.115, unless the context otherwise indicates, the following terms mean:
>
> (1) "Closed meeting", "closed record", or "closed vote", any meeting, record or vote closed to the public; [Emphasis added.]

* * *

Sections 610.100 and 610.105, RSMo 1986, specifically provide that arrest records and official records pertaining to a case resulting from an arrest become "closed records" after certain events occur, e.g., the arrested person is not charged within thirty days, the arrested person is charged but the case is later dismissed or nolle prossed, the arrested person is subsequently acquitted, or the arrested person is sentenced but imposition of sentence is suspended.

Legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Because the language of Sections 610.100 and 610.105, RSMo 1986, provides for arrest records to be closed records after one of the enumerated events occurs, it must be presumed that such records are open records from the time an arrest record is made unless and until an event occurs which by statute requires the record to be closed.

Your question specifically asks if arrest records for a twenty-four hour period preceding a request for such records are open or closed records. Pursuant to Sections 610.100 and

610.105, RSMo 1986, such records are open unless one of the enumerated events which would require the record to be closed has occurred.

Your question also asks if the name and address of the arrestee, the charge or violation, the date that the individual was charged, and the court date are open or closed records. Pursuant to Sections 610.100 and 610.105, RSMo 1986, unless one of the enumerated events requiring closure has occurred, the entire arrest record is an open record. Therefore, to the extent that the information listed in your question is included within an arrest record, this information is part of the open record. However, it is possible that not all of the listed information such as charges filed and court dates would be known and available within twenty-four hours of an arrest.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CONFLICT OF INTEREST: The phrase "which exceeds fifty
LOBBYING: dollars on any one occasion or instance or two hundred fifty dollars in the aggregate for any reporting period" in Section 105.470.4(2), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990) modifies the terms "expenditure, gift, payment, line of credit or loan . . . including a service or anything of value . . . ."

November 29, 1990

OPINION NO. 197-90

Richard G. Callahan
Cole County Prosecuting Attorney
Cole County Courthouse
301 East High Street
Jefferson City, Missouri 65101

Dear Mr. Callahan:

This opinion is in response to your question asking:

> Whether the phrase in Section 105.470.4(2), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, providing "which exceeds fifty dollars on any one occasion or instance or two hundred fifty dollars in the aggregate for any reporting period," modifies the term "service or anything of value" or whether it modifies the terms "expenditure, gift, payment, line of credit. . . ."

Section 105.470.4(2), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990), provides as follows:

> 4. By January fifteenth and July fifteenth in each year in which a lobbyist continues to engage in any activity described in subdivision (3) of subsection 1 of this section, each lobbyist shall file with the chief clerk of the house of representatives and the secretary of the

> senate on standardized forms prescribed by the chief clerk and the secretary of the senate reports which shall include a sworn statement setting forth the following:
>
> * * *
>
> (2) An itemized listing of the name of the recipient and the nature and amount of each expenditure, gift, payment, line of credit or loan by the lobbyist or the person, business, association or government agency by whom he is employed, including a service or anything of value which exceeds fifty dollars on any one occasion or instance or two hundred fifty dollars in the aggregate for any reporting period, paid or provided to or for a public official, his staff and employees, or his spouse or dependent children; [Emphasis added.]
>
> * * *

Construing this statute to ascertain legislative intent raises the question of whether the doctrine of the "last antecedent" applies. This rule of statutory construction holds that "relative and qualifying words, phrases or clauses are to be applied to the words or phrase immediately preceding and are not to be construed as extending to or including others more remote." Elliott v. James Patrick Hauling, Incorporated, 490 S.W.2d 284, 287 (Mo. App. 1973). Application of the rule to Section 105.470.4(2) would lead to the conclusion that the phrase "which exceeds fifty dollars on any one occasion or instance or two hundred fifty dollars in the aggregate for any reporting period" modifies the term "service or anything of value" rather than the more remote terms "expenditure, gift, payment, line of credit or loan. . . ." This interpretation would require reporting of all expenditures, gifts, payments, lines of credit or loans regardless of the amount involved.

The doctrine of the "last antecedent" is not inflexible. It has not been ". . . adhered to where extension to a more remote antecedent is clearly required by consideration of the entire act." Norberg v. Montgomery, 351 Mo. 180, 173 S.W.2d 387, 390 (Mo. banc 1943). "[T]he 'safest and surest' test to determine whether the general rule of the last antecedent or the exception thereto is to be applied is '. . . [a] common-sense interpretation . . . bearing always in mind the mischiefs to be

remedied and the benefits to be secured by the law." Elliott v. James Patrick Hauling, Incorporated, supra, 490 S.W.2d at 287, quoting State ex rel. Crow v. St. Louis, 174 Mo. 125, 73 S.W. 623, 629 (Mo. 1903).

In examining the questioned phrase in the context of Section 105.470.4(2), we believe that a common sense interpretation requires the minimum amount of "fifty dollars on any one occasion or instance or two hundred fifty dollars in the aggregate for any reporting period" applies to the entire list of items enumerated in that section.

CONCLUSION

It is the opinion of this office that the phrase "which exceeds fifty dollars on any one occasion or instance or two hundred fifty dollars in the aggregate for any reporting period" in Section 105.470.4(2), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990) modifies the terms "expenditure, gift, payment, line of credit or loan . . . including a service or anything of value . . . ."

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

COMPENSATION: Pursuant to the provisions of
FIRE PROTECTION DISTRICTS: Article VII, Section 13 of the Missouri Constitution, no current member of the board of directors of a fire protection district is entitled to the increase in attendance fees authorized by Section 321.190, as amended by Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Bill No. 1395 and House Bill No. 1448, 85th General Assembly, Second Regular Session (1990), until he assumes a new term of office.

December 26, 1990

OPINION NO. 198-90

The Honorable Wayne Goode
Senator, District 13
State Capitol Building, Room 329
Jefferson City, Missouri 65101

Dear Senator Goode:

This opinion is in response to your question asking:

> Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Bill No. 1395 and House Bill No. 1448, passed in the second regular session of the 85th General Assembly, amended section 321.190, RSMo, by increasing the maximum meeting attendance reimbursement for fire protection district board members in first class counties from $50 to $100 per meeting. May the fire district amend its ordinance to call for an increase in the attendance fees to meet the new statute or is the district prohibited from doing so by the Missouri Constitution, Article VII, section 13? If prohibited from taking such action immediately, when would the district be allowed to take such action; after the next scheduled election for board members, the reimbursement to then apply to all current and newly elected members; or after all current board members have served their terms?

Section 321.190, as amended by Conference Committee Substitute for Senate Substitute for Senate Committee Substitute

for House Bill No. 1395 and House Bill No. 1448, 85th General Assembly, Second Regular Session (1990) (hereinafter House Bills Nos. 1395 and 1448) provides, in pertinent part, as follows:

> 321.190. Each member of the board may receive an attendance fee not to exceed one hundred dollars for attending each regularly called board meeting, or special meeting, but shall not be paid for attending more than two in any calendar month except that in a county of the first class having a charter form of government, shall not be paid for attending more than four in any calendar month. . . . [Emphasis added.]

* * *

Prior to this amendment, Section 321.190, RSMo 1986, provided for an attendance fee not to exceed fifty dollars.

Article VII, Section 13 of the Missouri Constitution states:

> Section 13. Limitation on increase of compensation and extension of terms of office. The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended.

A "fire protection district" is defined by Section 321.010, RSMo 1986, as follows:

> 321.010. Definition--election procedure.--1. A "fire protection district" is a political subdivision which is organized and empowered to supply protection by any available means to persons and property against injuries and damage from fire and from hazards which do or may cause fire, and which is also empowered to render first aid for the purpose of saving lives, and to give assistance in the event of an accident or emergency of any kind. The district must consist of contiguous tracts or parcels of property containing all or parts of one or more counties, and may include within its

> boundaries, or may be contiguous with, any city, town or village.
>
> * * *

A fire protection district created pursuant to Chapter 321, RSMo, has been held to be a municipal corporation. Community Fire Protection District of St. Louis County v. Board of Education of Pattonville Consolidated School District R-3, 315 S.W.2d 873, 877 (Mo. App., St.L. 1958). Therefore, we conclude that members of the board of directors of a fire protection district are "municipal officers" as the term is used in Article VII, Section 13 of the Missouri Constitution.

In Mooney v. County of St. Louis, 286 S.W.2d 763 (Mo. 1956), the Missouri Supreme Court faced a question similar to your question when a statute increasing the compensation of members of the Board of Election Commissioners of St. Louis County was enacted. The Court stated:

> We must assume that the members of the General Assembly were fully cognizant of the instant constitutional limitation. In all of the cases we have examined in which an increase during the term of office has been upheld, the legislature, in the Act creating the additional duties, has specifically provided that the extra compensation was for the performance of those duties.

Id., 286 S.W.2d at 766. The Court concluded that former members of the St. Louis County Board of Election Commissioners were not entitled to recover additional compensation where there was no showing that the increase was to compensate for new and additional duties.

Similarly, House Bills Nos. 1395 and 1448 contain no provision leading to the conclusion that the increase in attendance fees is intended as compensation for new and additional duties. Therefore, we conclude that pursuant to the provisions of Article VII, Section 13 of the Missouri Constitution, members of the board of directors of a fire protection district are not entitled to receive, in their present term of office, the additional compensation authorized by Section 321.190, as amended by House Bills Nos. 1395 and 1448.

You next ask when a fire protection district board member is allowed to receive the additional compensation. In Attorney

General Opinion Letter No. 29, Antonio, 1982, a copy of which is enclosed, we concluded:

> Pursuant to the provisions of Article VII, Section 13 of the Missouri Constitution and in the absence of the imposition of new duties for which additional compensation is expressly provided, an increase in the compensation of members of the State Board of Probation and Parole would not take effect until the beginning of a new term of office for such member.

Id., at page 3. See also Attorney General Opinion No. 25, Antonio, 1982, a copy of which is enclosed, concluding that no member of the State Tax Commission was entitled to an increase in compensation provided by a new statute until he assumed a new term of office. Therefore, we conclude a current member of the board of directors of a fire protection district cannot receive the additional compensation until he assumes a new term of office.

CONCLUSION

It is the opinion of this office that pursuant to the provisions of Article VII, Section 13 of the Missouri Constitution, no current member of the board of directors of a fire protection district is entitled to the increase in attendance fees authorized by Section 321.190, as amended by Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Bill No. 1395 and House Bill No. 1448, 85th General Assembly, Second Regular Session (1990), until he assumes a new term of office.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion Letter No. 29, Antonio, 1982
Opinion No. 25, Antonio, 1982